Social

THE RIGHT TO LIFE
OF THE
UNBORN CHILD

A CONTROVERSY BETWEEN

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PREFATORY NOTE

TO THE

ENGLISH EDITION.

The book before us is an authorized and faithful translation of the work, "*Het Levensrecht der Ongeboren Vrucht,*" published jointly by the three authors of the papers of which the work consists, namely Prof. HECTOR TREUB, M.D., a gynecologist of renown, and Rev. R. VAN OPPENRAAY, S.J., and Prof. TH. M. VLAMING, M.D., both well known authorities in their respective professions.

In offering these papers in an English version it is believed that they will prove of interest and of service to the theological and medical professions. We have here an exhaustive statement of the pro and contra of a very important and greatly mooted subject, both sides being represented by learned and distinguished defenders.

The translation into the English language is the work of the Rev. C. VAN DER DONCKT, of Pocatello, Idaho, who has also added some notes wherever they were thought desirable for a proper appreciation of the facts presented in this book.

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I. MEDICAL ABORTION AND THE CHURCH.

BY PROF. HECTOR TREUB, M.D.

> **Whoever forbids, or in any way hinders another to call in, or to accept, medical aid for his ailments shall, in case death results from the illness, be punished with imprisonment. . . .** ***Proposed for the Penal Code.***

This addition to the Penal Code is not aimed at those peculiar people, who, I am not aware out of what singular conviction, ask no medical help in their own or their family's illness. In so far as their course concerns their own lives, they are, in my opinion, perfectly free to do so, and can not be interfered with even for the good of the public health. By letting their children die through lack of medical assistance, however, they no doubt take upon themselves a criminal responsibility. Nor is this statute meant to affect the not uncommon case where doctors can not agree upon the treatment of a certain

case; where, *e. g.*, the one advises an operation and another disapproves of it. In such a contingency the patient or his guardians are free to reject the treatment under discussion.

The exact purpose of my proposed augmentation of the law may be determined from the following statement of facts:

On the 31st of last March I addressed to the Right Rev. Bishop Bottemann, of Haarlem, the following letter:

> RIGHT REVEREND SIR: This evening I was called in consultation to Mrs. N. N., living at ——, treated at ——.
>
> I found this woman of forty on the point of death, her face and extremities were cold, her consciousness well-nigh gone, her pulse nc longer perceptible. There is, of course, a sheer possibility of her surviving, but to all appearances she is doomed. Efforts to save her life are out of the question *now*. Such efforts could, however, have been made a week ago, and would *then*, in all likelihood, have been successful. Such efforts were not made then because, as I learned this evening, the woman's priest, the Rev. X., residing here, *forbade* the patient to consent to the treatment.
>
> Mrs. N. having been pregnant for ten or twelve weeks has come to her present precarious condition through uncontrollable vomiting. All remedies proving unavailing, the physician who treated her, Dr. Y., proposed *abortion* as a last resort. The woman replied that her confessor had forbidden such a course. The physician talked the matter over with the priest, among other things pointing to the fact that the saving of the fetus, even only for baptism, was in either case out of the question, as it would surely die before the mother, if things were allowed to take their natural course. As a result of this conversation, the priest promised to deliberate over the subject, but finally instructed the patient that abortion *could by no means be allowed.*

I am aware of the tenets of the Catholic Church, which forbid the sacrifice of the unbaptized fetus, and should your Lordship wish to inquire as to whether or not I generally strive to conform to this and other pertinent rules of the Catholic Church, satisfactory information may be obtained from the curates of the priest referred to. But I can not believe that the Catholic Church desires her teachings interpreted in the narrow way of Father X.

If the Church requires complete submission of her members to the authority of her priests, she must necessarily exact of the latter that they apply the Church's rules in a *judicious* manner. This is what I think Father X. failed to do in the case under discussion.

As a fact, the physician had told the priest that if abortion was not procured, the child would certainly die before the mother. Nor did Father X. in forbidding the abortion speak of saving the fetus.

So, if Mrs. N. succumbs, to-night or to-morrow, all that can be said is that her life was sacrificed, not to the precepts of the Church, but to their narrow interpretation by a priest.

I desire to lodge this complaint against Father X. for two reasons: First, that, if you coincide with my view, your Lordship may prevent the recurrence of such a sad case at the hands of Father X. or of any other priest under your jurisdiction. Secondly, that I may receive an answer from your Lordship concerning this charge, so as to know what course I must pursue hereafter in my lectures on obstetrics.

With profound respect ——,

HECTOR TREUB.

Before quoting the reply received to this letter, I shall state some further facts.

Firstly, the patient died a few hours after my visit.

Secondly, another physician, called in after the woman's death, opened her womb and removed the fetus. He is reported to have

said that it was still alive. As I was not present, I can not say whether or not this was so. But I have the right, and, in my opinion, the duty, to declare that his assertion conflicts with all experiences and records.

The correctness of Dr. Y.'s opinion, that by letting nature have her course, the child's life could not have been saved, not even for baptism, remains intact even after this occurrence, because exceptions can not affect the rule.

Thirdly, I will briefly explain what I knew of the attitude of the Church in these matters, which prompted me to write this letter. I was not unaware of the long controversy between Catholic moralists over the question as to whether the fetus might be supposed to have first a vegetative and afterward a rational soul.* How this

* Such was Aristotle's opinion, adhered to by the scholars of the Middle Ages, though they condemned abortion from the time of conception. It was not till 1620 that Fienus, a physician of Louvain, Belgium, published the first book of modern times that came near the truth. He maintained that the human soul was created and infused into the embryo three days after conception. Nearly forty years later, in 1658, Florentinius, a priest of a religious order, wrote a book in which he taught that the soul may be intellectual or human from the first moment of conception; and the Pope's physician, Zachias, soon after, maintained the thesis as a certainty that the human embryo has from the very beginning a human soul. This true doctrine, which St. Gregory of Nyssa taught as early as the fourth century, modern science claims to have proved beyond all doubt. Accordingly, in many States of the Union, the law casts its protection around an unborn infant from its first stage of ascertainable existence. "To make the criminality of abortion depend upon the fact of quickening," says Wharton and Stille's Medical Jurisprudence, "is as repugnant to sound morals as it is to enlightened physiology." Translator's note, quotation from Rev. Coppens', S.J., Moral Principles and Medical Practice.

question was decided I know not, but, were it still an open question, then physicians, etc., could occasionally avail themselves of it to not absolutely condemn abortion. There was no certitude regarding this matter to be found in all the literature to which I had access. I was aware, however, that to the question whether craniotomy of the living child was lawful, the Holy Office had answered to an inquiry by a certain archbishop that it was unsafe to teach such practice (*tuto doceri non posse*). Since this answer cautiously treats the question whether craniotomy of the living child may be considered permissible, and as there is not contained in it a positive *condemnation* of the killing of the unborn fetus, I believed I was dealing with Father X.'s *personal* narrow interpretation.

That my impression was wrong, appears from the following reply which I received:

HAARLEM, April 3, 1901.

ESTEEMED SIR: Since your letter came to hand, I have most carefully examined the case set forth therein, and, as a result, I am constrained to inform you that Father X. acted agreeably to the teaching of the Catholic Church. She has always taught that abortion, as a destroying act, is never allowed. As late as 1895, Rome has issued a decision on the subject in answer to the following inquiry:*

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* *Titius medicus, cum ad praegnantem graviter decumbentem vocabatur, passim animadvertebat lethalis morbi causam aliam non subesse praeter ipsam praegnationem, hoc est foetus in utero praesentiam. Una igitur ut matrem a certa atque imminenti morte salvaret, praesto ipsi erat via, procurandi scilicet abortum seu foetus ejectionem. Viam hanc consueto ipse inibat, adhibitis tamen mediis et operationibus per se atque immediate quidem non ad id tendentibus, ut in materno sinu foetum occiderent, sed solum*

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"MOST HOLY FATHER: Stephen Mary Alphonsus Sonnois, Archbishop of Cambrai, humbly submits the following: Dr. Titius, when called to a pregnant woman, who was very ill, observed repeatedly that the only cause of her deadly disease was her pregnancy, *i. e.*, the presence of a fetus in her womb. Hence there was but one way open to him to save the patient from certain and imminent death, namely, to cause abortion. On this course he usually decided in similar cases, taking care, however, to avail himself of such remedies and operations which would not of themselves, or not immediately kill the fetus in the womb, but, on the contrary, would, if possible, deliver the child alive, although, not being able to live, it would die soon afterward. But after reading a rescript from the Holy See to the Archbishop of Cambrai, dated August 19, 1888, that it was unsafe to teach the lawfulness of any operation which might directly kill the fetus, even though such were necessary to save the mother, Dr. Titius began to doubt the lawfulness of the surgical operation by which he had not unfrequently caused abortion to save pregnant women who were very ill.

"Therefore, in order to set his conscience at rest, Dr. T. humbly asks whether, on recurrence of the like circumstances, he may resort to the aforesaid operations.

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modu ut vivus, si fieri posset, ad lucem ederetur, quamvis proxime moriturus, utpote qui immaturus omnino adhuc esset. Jam vero lectis, quae 19 Augusti 1888 Sancta Sedes ad Cameracensem Archiepiscopum rescripsit: tuto doceri non posse licitam esse quamcumque operationem directe occisivam foetus, etiamsi hoc necessarium foret ad matrem salvandam, dubius haeret Titius circa liceitatem operationum chirurgicarum, quibus non raro abortum hucusque procurabat, ut praegnantes graviter aegrotantes salvaret.

Quare ut conscientiae suae consulat supplex Titius petit utrum enunciatas operationes in repetitis dictis circumstantiis instaurare tuto possit.

Feria iv. die 24 Julii 1895.

In Congr. gen. S. R. et Un. Inquisitionis, proposita suprascripta instantia, Revmi Domini Cardinales in rebus fidei et morum Inquisitores generales, prae habito R. D. consultorum voto, respondendum, decreverunt:

NEGATIVE juxta alia Decreta diei sc. 28 Maji 1884 et 19 Aug. 1888.

"ROME, July 24, 1895.

"To this urgent request the Cardinals of the Holy Roman Congregation of the General Inquisition, after advising with the theological consultors, have decided to answer: *No;* according to other decrees, namely, those of May 28, 1884, and of August 19, 1888.

"Furthermore, esteemed sir, the Sacred Congregation, besides referring to the decree quoted herewith, has declared that it is *unlawful* to cause abortion also when the woman's pelvis is so narrow that even a premature delivery is not considered possible.*

"You will, esteemed sir, readily conclude from both rescripts that I have no reason whatsoever to find fault with Father X., and that it is by no means through want of benevolence that I can not please you.

"Fully appreciating your well known conscientiousness in acting up to the prescriptions of the Church, I remain,

"Yours very respectfully,

"✠ C. J. M. BOTTEMANN,

"Bishop of Haarlem.

"TO THE HON. PROF. H. TEEUB."

The purport of this letter grieved me, much as its benevolent tone pleased me. I was gratified, nevertheless, to learn that I had unjustly accused Father X. of having caused the woman's death through narrowmindedness. But as this priest's interpretation is the one binding upon all Catholic priests, and in view of their interference in cases of the kind described above, I should consider it a dereliction of duty on my part if I failed to bring this matter before

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* *Si mulieris arctitudo talis est, ut neque partus praematurus possibilis censeatur. Cfr. Nouv. Revue Théol. t. xxxi. p. 277, ii.*

the public. For the question is, whether the Dutch legislators shall permit a body of priests at Rome to dispose in such manner of the lives of Holland's female citizens. In my judgment, this would be unworthy of the Dutch lawgiver. If he is really in earnest about the penalties imposed by law for the public health he can not allow himself to remain passive.

Should the Dutch legislator acknowledge that the law is not equally binding for all Hollanders, but that a large group of Hollanders are justified in setting the rules of Rome above the law of the land, then the penal laws must needs be altered.

For the benefit of such as hold that I put the case too strongly, I beg leave to make the following remarks:

There can be no question of inconsiderate precipitateness, as I write about four weeks after seeing that patient. Also, since that time, I have often thought over the matter, and spoken of it with different men, doctors and laymen, Catholics and Protestants; with them I have deliberated over it, and formed a well-matured judgment.

My strong language is readily traceable to the deep impression which the unnecessary death of that scarcely forty-year-old woman made upon me.

I repeat, I should deem myself guilty of neglecting my duty as a reputable physician if I did not do whatever lies in my power, to make it impossible for myself or any other Dutch physician to again stand at such a death-bed—a death-bed of which it may be

said: *There lies a young woman murdered through the narrow decrees of the Holy Office.*

Needless to state that I have no desire to see a Catholic priest eventually lodged in jail. But the very fact of the possibility of such an occurrence would easily prompt the Holy Office to take into account the mind of the majority of a population of a country where perfect liberty of worship exists, yet where one does not tolerate that the prescriptions of any church shall degrade religion into a Moloch-worship which demands human victims.

II. REPLY TO PROF. H. TREUB, M.D.

BY THE REV. R. VAN OPPENRAAY, D.D., S.J.

I beg leave to propose an amendment to the new statute drafted by Prof. H. Treub, prefixed to his paper here preceding. He proposes that: Whoever forbids or in any way hinders another to call in, or to accept, medical aid for his ailments, shall, in case death result to the other from the illness, be punished with imprisonment, etc.

I would suggest to insert "such medical aid that will neither conflict with the laws of morality nor with the precepts of a recognized creed."

Even in this form such law would surely provoke considerable parliamentary debate, but then the most dangerous point would be obviated by my amendment. For this way the Catholics would not be put to the test as to which they respect more, their religious convictions or the views of the legislators of their country, and as to whom they would acknowledge as the supreme judge of morals, the State or the Church.

No one suspects Prof. Treub, the implacable foe of criminal abortion, of unscrupulousness in medical treatment, or of encouraging or even tolerating of immoral abuses, consequently he will cheerfully accept the first part of my amendment. Nor will any one ascribe to the

humane and tolerant professor any "Kulturkampf" tendencies; still he proclaims himself an opponent to the second part. "That makes the whole law useless," he will probably say, "as it aims precisely at such a religious precept." And should we hint at liberty of conscience, he will indignantly interrupt us: "Liberty indeed, in all that which is reasonable, moral or even doubtful; but, no liberty for Moloch-worship and human sacrifices." There are things which are wrong beyond doubt, which neither can nor should be made doubtful by Church decisions. The tragic occurrence which led Prof. Treub to propose this law evidently belongs, in his opinion, to that latter class. The fact is (to him) so clear as to relieve him of the necessity to submit proofs for his charges, and as to move him to use expressions of which he himself qualified the mildest as strong.

Is the matter, then, really so evident? Let us consider. The most renowned professional men—teaching moral theology is a profession, forsooth—have ever found this matter an extremely difficult one. The Church, having attentively followed the disputes of these most learned professional men, after centuries of prudent hesitation at length coming to the decision that a certain medical treatment is illicit, it must be evident that submission to this particular treatment can not be imposed on anybody as a strict duty. Or may our theologians be supposed to be so stupid and barbarous as to prescribe downright abominations? And had the wise Pope Leo XIII. the reputation of being narrow or thoughtless, so as to approve of narrowminded decisions, at different periods of his reign?

The difficult question, as to whether the intra-uterine fetus may be killed to save the mother's life, when otherwise both mother and child are in danger of perishing, hinges upon the following fundamental principles of Catholic, and, I hope also, of Christian, morals:

I. Thou shalt not kill.

II. Uterine life must be respected as much as the extra-uterine.

III. The end never justifies the means: *Non sunt facienda mala ut eveniant bona*, i. e., one can not do evil that good may come.

To shake these principles is exceedingly dangerous, not only for the social well-being, but also for morality in a strict sense. And is it not clear that they are shaken by any arbitrary action which clashes with these principles?

To explain, defend, and apply these principles in the case, it would require more space than I may ask. Moreover, it behooves one to leave that task to a certain professional man, who will soon treat this subject at length in another paper.* I simply desire to show by analogy—as a preliminary to, and in anticipation of, his thorough analysis—that the case is by no means so self-evident as it appears, and that Prof. Treub has allowed his good heart to lead him astray.

Let us suppose the following case, which we shall call *Case A* in distinction from *Case X:*

Case A: Right after the birth of a child a jealous and barbarous

*Dr. Th. M. Vlaming's paper. See page 22.

husband would say to the mother: "Kill this fruit of your unfaithfulness, or I shall kill you both." Should this woman now argue: "Better one dead than two," and should she strike her own child, what judge would have the courage, I will not say to excuse her, but to acquit and even praise her? And, reversing the case, who would not applaud the mother who would answer her brute husband: "I shall rather die with my child than live at the expense of my child's life"?

Well, now, what difference in principle is there between *Case A* and *Case X*? That the threat in *Case A* comes from a debased man, and in *Case X* from nature, rather favors my position; for the means which I may not use to free myself from the consequences of an unjust attack, may certainly not be used to prevent the natural consequences of a natural condition.

Nor does any difference arise from the fact that in *Case A* the mother would herself kill her offspring, for, though in *Case X* the mother's hands are not actually imbrued in blood, the deed is *hers* all the same, as the physician is but her tool.

There remains, then, no difference between both cases, except that in *Case A* the child is *outside*, and in *Case X inside*, the mother's womb. And what does this difference amount to? Is the killing of the child, which in both cases must die at any rate, a lawful deed to save the mother one day before its birth, and a horrible crime the next day after? And whether one day before its birth, or four or five months before, what difference would it make?

But let us not content ourselves with these questions, however clearly they are self-evident.

If the child may be killed in *Case X* and not in *Case A,* this, methinks, can be only for three reasons:

1. That the life *in* the womb, i. e., an infant's life, comes less under the law than *out* of it.
2. That in this case there is question of an immature fetus.
3. That this fetus must in any event die before birth.

No one will care to countenance the first reasons. For, apart from the fact that one can not logically detect a difference in rights between the living child in the womb and the same child just born, such ideas would open a wide door to immoral conclusions. For instance, the means that may be employed to save the mother's life, may be resorted also to for other reasons equally grave, e. g., to save one's honor, etc.

Nor can the third reason stand. If the unborn offspring may be sacrificed, because it can not arrive at birth, why might one not also sacrifice the child just born, which is but one step further in its development and has no chance of surviving (*Case A*)? Both must die at all events, die without any consciousness of life, without any conscious enjoyment of life, without having performed any conscious act.

Some one has contended that 2d and 3d must be taken together; and that an immature fetus, which can not reach maturity, may be

destroyed for grave and sufficient reasons. The argument has been advanced that a fetus under such circumstances is but an organized tumor. I answer: If of two reasons, independent of each other, the first proves nothing, and the second proves nothing, then they prove nothing taken together. And as regards this argument, I say: Either the fetus is always a mere organized tumor, or it is always more than that (also in *Case X*). Extrinsic circumstances, such as, in this case, the sickness of the mother, can not alter the intrinsic essence of a thing. Or was the immature fetus a child before the mother's illness, and turned suddenly into an "organized tumor" when the disease reached a certain degree of severity, and will it again become a *child* when the danger disappears?

The conclusion from all this is obvious: Either the horrible child-murder is equally lawful in *Case A,* or the killing is equally unjustifiable in *Case X,* and becomes a *medical* Moloch-worship.

I do not at all flatter myself that my readers will by these few remarks be convinced of the necessity of the Catholic view; but, I trust, many will agree that this view is neither foolish nor criminal. And if the severe and inflexible decision of the Holy Office does compel the tardy respect for uterine life, then the children spared will far exceed in number the few heroic mothers who, for the sake of a great moral principle, die because they refuse a treatment, without which sometimes both mother and child are preserved, and by the application of which the mother is by no means always saved at the cost of her child's life.

III. PROF. H. TREUB AS PENAL LEGISLATOR.

BY DR. TH. M. VLAMING.

Prof. H. Treub, lecturer on obstetrics at the University of Amsterdam, has lately proposed a new law which he desires enacted. It reads as follows: Whoever forbids or in any way hinders another to call in or to accept medical aid for his ailments shall, if death result from the illness, be punished with imprisonment, etc.

I shall here recite the incident which occurred to the professor in his practice and which led him to formulate that proposition:

Mrs. N. N., pregnant for ten or twelve weeks, suffered in consequence of her pregnancy from excessive vomiting (hyperemesis gravidarum), so that her condition became critical, and her physician, Dr. Y., suggested to her, as a last resort, the procurement of abortion.

The woman answered that her pastor had forbidden this course. Thereupon Dr. Y. interviewed the priest, and told him that "there could be no question of saving the child, not even for baptism, as it would die before the mother."

The pastor, nevertheless, maintained that "such action was absolutely illicit." About a week after this Prof. Treub was called into consultation, only to find that any efforts to save the woman

would now prove useless, though such efforts, if resorted to a week sooner, would have been almost certainly successful. Though the professor knew of the Catholic Church's decree forbidding the sacrifice of the unbaptized offspring, he thought he had to deal in this instance with the narrow interpretation of that law by the pastor. Under that impression he reported the case to the Bishop of Haarlem, in the form of a complaint against the priest, expressing the hope that the prelate would take measures to prevent the recurrence of such a sad case, and, furthermore, that the Bishop's answer would enlighten him as to the course he would have to take in his lectures on obstetrics. The Bishop of Haarlem sent to the professor a lengthy reply. Whence it became evident that the narrowness of which, in the professor's opinion, Father X. was guilty, was, in reality, the correct interpretation of the decrees of the Holy Office* at Rome, quoted or indicated in the Bishop's letter, denying the lawfulness of medical abortion as a means to save women's lives.†

With reference to this decision of the Roman tribunal, Prof. Treub puts the question whether the Dutch lawmaker will allow a

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* The Holy Office is a judicial college of ten cardinals who, under the personal presidency of the Pope, issue final decisions in questions bearing on Christian faith and morals. This college is assisted by some thirty consultors of different nationalities; besides also by a dozen officers of higher or lower rank.

† Thus agreeably to some other decisions, the decrees of July 24, 1805, and of May 4, 1898, "ad II.," mentioned, *e. g.*, in *Nouvelle Revue Théol.*, No. 27, p. 599, and No. 31, p. 277, and in *Canoniste Contemporain* No. xviii., p. 678, and No. xxi., p. 483.

college of priests at Rome to dispose of the lives of Holland's women without any resistance.

The professor answers the question with a decided *No,* and hopes that the national legislature will do likewise, and that they will insert in the Penal Code the amendment which he proposes.

Readers of this periodical who do not know Prof. Treub, except through this petition, might readily judge him biased and overbearing, and, in fact, favoring a revival of the *Kulturkampf.* They would thus greatly wrong the professor, for he justly prides himself on the impartiality—known even to the Bishop of Haarlem—with which he has met the regulations of the Catholic Church in his practice. I had the pleasure of learning that also from Catholic medical students and from Amsterdam priests. Indeed, Prof. Treub himself thus closes his paper: "It is not my wish to have a Catholic priest eventually lodged in jail; but the very fact of the possibility of such an occurrence would easily move the Holy Office to take into account the opinion of the majority of the population of a country where perfect liberty of worship exists, yet where one does not tolerate that the ordinances of any church shall degrade religion into Moloch-worship which demands human victims."

It is manifest that Prof. Treub's very peculiar statute of law springs from a difference of view between him and the Holy Office regarding the lawfulness or unlawfulness of medical abortion. And this divergence of view is traceable probably to the fact that Prof. Treub looks at the question only from its medical point of view,

whereas the Holy Office considers its ethical side. To a physician like Prof. Treub, who values his knowledge devoted to the relief of suffering humanity above all else, it must doubtless be painful to see a patient, whose life he thinks he can save without fail, prefer death to the violation of a moral principle, which, however sacred to her, is not thoroughly appreciated by him, the doctor. This, no doubt, is painful, but sentiment can not do away with the reasonableness of the principle nor with the right to enforce it by precept, especially where, as here, there is question of a precept, which, as its history* shows, has been deliberated over long and earnestly, weighed by men whom the professor rather slightingly designates as a college of priests at Rome, but who are really men of solid and varied learning; men, who, fully conscious of their grave responsibility, decide the matters proposed to them only after seeking the best light on the subject, and after mature deliberation; men, finally, who take no less interest in the relief of suffering humanity than any of their fellow men.

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* See this history up to 1884, given fully by A. Eschbach's *Disputationes physiologico-theologicae de humane generationis oeconomia, de embryologio sacra, de abortu medicali et de embryotomia; de colenda castitate. Parisiis 1884.* (A second edition of this work came out lately.) In the *Disputatio tertia: "De occisione foetus ad salvandam matrem, seu de abortu medicali, et de embryotomia"* we find *"Pars I. Controversiarum historica synopsis.* § I. *Medicorum sententiae et disputationes.* § II. *Theologorum et Canonistarum sententiae.* Then *Pars II. Sententiarum critices."* This criticism is continued in *Nouv. Revue Théol.*, Nos. xvi. and xvii. See also Dr. J. Heidenreich's detailed and comprehensive treatment of the subject in *Archiv f. Kath. Kirchenrecht*, bk. 63 (1890), pp. 289-390.

Prof. Treub, who surely will not take the verdict of this personal sentiment in the domain of ethics and religion as final, should, in my opinion, have pondered well over this matter before allowing himself to be carried away to such loud and violent indignation, which has proved contagious far beyond the academic halls. What avails it to appeal to sentiment or to "impression," or to characterize our religion as Moloch-service, or to italicize the exclamation: *There lies a young woman killed through the narrow prescriptions of the Holy Office!*

To appeal to the sentiment of the population will, for many reasons, help but little, chiefly so because the bulk of our people still believe that the dominion over the unborn man's life and death belongs altogether and exclusively to the true and living God, and not to Aesculapius, the imaginary god of medicine.

* * *

The thought just expressed—God's absolute and exclusive dominion over all human life—involves the great principle underlying the Holy Office's decisions, which Prof. Treub impugns. Because of this principle, it is a crime to cause or bring about abortion, it being equivalent to the direct taking of an innocent human life,*

* It matters not that there is not so far a *complete* unanimity in the answer to the speculative question whether the fetus has a rational soul at the very moment of conception or only after a certain stage of development. The moral certainty that through abortion a human life is de-

consequently a transgression of the Divine law "Thou shalt not kill." * Abortion procured with the best of intentions is still an infringement of that law. Neither the intention of thus saving the mother's life, nor even the intention of procuring baptism for a child whose life can not be saved,† justifies that trespass. For, the twofold purpose of saving the mother's life and of baptizing the infant can not do away with the intent, evil of itself, of depriving the unborn offspring of a life to which it has a God-given right. This accords with the inspired principle: "And not rather let us do evil that there may come good" (Rom. iii. 8); or, in other words: The end does not justify the means.

Whether Prof. Treub has any scruples about that law does not

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stroyed entails the obligation of following the safe line of conduct, and of not attempting violence, no matter in what period of pregnancy. Nor can, according to our Penal Code, anything be attempted with impunity against the fetus no more in the first than in the later periods of pregnancy. Cfr. Noyon, Art. 295, 3.

* That this is the ground of the Church's law, and not, as Prof. Treub seems to hold, the order: "Increase and multiply" may be seen at first glance in the pertinent constitutions of Sixtus V. and Gregory XIV., which speak throughout of the procurement of abortion as of murder.

† I mention this because Prof. Treub apparently opines that the Catholic Church forbids only the sacrifice of the *unbaptized* offspring. Dr. Y., the physician in the case under consideration, seems to labor under the same impression, as, in order to move Father X. to consent, he called attention to the fact that there could be no question of saving the child, *even were it only for baptism*, as the child would die before the mother. The same opinion is shared by the author of "Beschouwingen over Art. 295-298 van het Wet b. v. Strafrecht, 'S Gravent." 1887, p. 47. Therefore, I emphatically declare that the Church in forbidding abortion aims, in first place, at protecting the *natural* life of the fetus.

appear from his article. All we can learn from it is, that he finds the decree of the Holy Office narrow and its application Moloch-worship. I believe I come closest to his mind by admitting that his utilitarian sentiment revolts against that injunction, and raises the question: Why may we not choose the lesser of two evils? If I do not procure abortion in this case, both mother and child will die before my eyes; if I do procure it, the child taken from its element will die, it is true; but at any rate I shall save the mother. What objection can the Church have to my choosing the lesser of two evils, the more because in this case I shall be able to baptize the child, whereas otherwise it will be deprived of this blessing?

As regards the bestowal of baptism, the answer is given above. The rule "One may not do evil that there may come good" extends even to the great boon of baptism. Murder is intrinsically evil, is forbidden by the Author of Nature's law, is a crime. Now, God who forbids murder, and thus also forbade abortion, can not void this law for any purpose, however apparently beneficial, nay, not even for the purpose of some one's eternal salvation.

There remains, then, the one question: Must one not choose the lesser of two evils?

A little thought will show that under this question a great sophism lies hidden in our case. For it makes it appear as though we were dealing here with two things, both evil *in one and the same sense;* whereas, in reality, choice is claimed between two things, indeed both evil, but in a wholly *different* sense. The choice is here

between letting the mother and the fetus die together, an evil only from a *physical* point of view (*malum physicum*), and the positive *murdering* of the fetus in order to save the mother, an evil from a *moral* view-point (*malum morale*). Should both things be evils of the same order, *e. g.*, both only physical evils, then, of course, one ought to choose the lesser of the two. He who puts the question insinuates that the killing of the fetus is but a physical and not a moral evil, taking for granted the proof, which he ought to give. Consequently, as long as the insinuation is not proved, the conclusion abides that medical abortion, being a *moral* evil, may not be practised to hinder the merely *physical* evil of the mother's death. "One may not do evil that good may come."

Perhaps Prof. Treub has the following reply ready: Suppose that, by causing abortion, moral evil is done to the fetus' life, then it would be for me, as a physician, a far greater offense to let *both* mother and child die than to neglect the means of saving at least the mother. By letting only the fetus die, I really choose the lesser of two evils of the same *moral* order.

I rejoin: Your reply wrongly supposes without any proof that the means of which you speak is a lawful one. Certainly you would fall short of your duty as a physician if you neglected to use a *lawful* means to save the mother. But nothing obliges you—on the contrary, all that is reasonable *forbids* you—to adopt in your medical practice any *unlawful* means, even were this unlawful means a last resort. Now, abortion is of its very nature an unlawful means, even

though you should have recourse to it with the noblest ulterior purpose. Thus your argument built upon the supposed moral obligation of availing yourself of an unlawful means is disposed of.

I take it that I am also a correct interpreter of Prof. Treub's reasoning process, by admitting that in our case he looks upon the fetus as an unjust aggressor on the mother's life, an invader, whose materially * unjust attack upon the mother bestows upon the latter the right to self-defense just as this right arises for him, who sees his life threatened by a person rushing upon him in a sudden fit of insanity. To tell the truth, I should not of my own accord have thought it worth while to bring forward this antiquated argument which has been refuted a hundred times. But I have been assured that it is still current in academic circles, and even that it impresses some Catholic students as being sound. Therefore, I answer briefly:

1. The fetus no more attacks the mother's life than the mother the child's. Neither of them does aught resembling the just mentioned attack of the insane man. The latter really attacks, really wrongs the one whose life he threatens, is indeed an agent through whose act a right is injured. It is altogether different with the mother and fetus in our case. They are in regard to each other's

* Needless to say that the fetus, being without consciousness, does not inflict a formal or voluntary injury. That is why we prefer the example of an insane man who, while attacking one's life, really and materially invades one's right to live, though his act is not voluntary, and, therefore, not formally wrong.

lives not *agents*, but mere *patients*. What simultaneously threatens the lives of both is simply the fatal circumstances due to pregnancy. Both are no more unjust aggressors toward the other than, *e. g.*, those passengers of a ship that fall the first victims to a plague are toward their fellow-passengers. And as the captain of such ship could by no means order the sick to be thrown overboard (*à la Nietsche*) to save the other passengers; much less could in our case the child, who has a right to be where it is, be thus summarily dealt with.

2. On the contrary, if an attack on life may be spoken of at all, it is not the fetus who is the unjust aggressor toward the mother, but rather the mother toward the child. Not only its existence, but, in nearly all cases, any danger to its existence, comes from the mother. The child has not done anything wilful whatsoever to constitute itself a menace to the mother's life. Hence there can absolutely be no question of an unjust attack. In most cases* the obstacle to delivery lies with the mother, *e. g.*, narrowness of the pelvis, etc. Consequently if through an act of the mother's will, cohabitation, the child has, without its cooperation, been placed in the mother's womb; if, afterward, by the mother's act efforts are made to remove the child from the womb; if, finally, as is the fact in most cases, obstacles on part of the mother disturb or hinder that removal, and if, through the concurrence of these circumstances, all traceable to the mother,

* See the refutation of Dr. Hubert by Eschbach, p. 363.

the lives of both are endangered, is there a shadow of reason to call the child an unjust aggressor, or an aggressor at all? *

The argument just refuted is sometimes set forth in the following somewhat different form: Where, in consequence of pregnancy, the lives of both mother and child are in danger there is a collision of rights, just as in the case when two shipwrecked persons cling to the same plank which is too light to hold up both, so that unless one of them is pushed off, both will be drowned. In such a collision of rights it is held not only that one of the two may seek to save himself at the cost of the other's life, but even that a third party, *e. g.*, in the case of these shipwrecked persons a swimmer who hurries to their rescue, and in our case the physician in charge of the case, may intervene in behalf of one of the two, for instance, in favor of the worthier.

Such cases are dealt with in lessons on penal law, and, accordingly, it is claimed that he who would really push off one of the two shipwrecked men would not be accounted guilty of murder. Besides (so our opponents seek to clench their argument) most men will act thus by instinct, and will endeavor to save at least what can be saved, even at a sacrifice.

I reply: 1. The question is not, what one would do *by instinct* in such critical circumstances, where man's reason is perplexed, and where sentiment will easily get the better of judgment. No; the

* Thus speaks Dr. Capelmann. *De Occisione foetus.* Aix-la-Chapelle, 1875, p. 24.

question is, what is and remains sensible and *moral,* even in such straits, according to ethics?

2. If eventually the judge makes, and must make, allowance for mental confusion in such bewildering emergencies, this does not prove that what has been done was done with correct judgment, or that the action left unpunished, or, for the nonce, held unpunishable, accords with reason and ethics. Penal law is not *per se* also ethics, especially nowadays, when, according to many schools of jurisprudence, " legality " and morality are completely divorced.

3. There is no perfect parity between our case and that of the two shipwrecked persons. Whereas one of these shipwrecked persons is no more cause of their plight than the other, the mother, in our case, is most positively the chief cause of the trouble: Firstly, to herself, and not to the fetus, is due the pregnancy; secondly, by her, in most cases, and not by the fetus, has been brought about the illness due to pregnancy. Accordingly, if there be here a collision of rights, the mother's right should yield to the child's.

4. Moreover, granting the parity, it is decidedly untrue that there is in our case a collision of rights. The right to live of a drowning person comes generally after that of the one as yet in a safe condition, and so likewise the mother's right to live comes after the child's. The two rights do not clash as long as the drowning man leaves the other one unmolested; their rights come into collision, however, through the natural, to them fatal, course of events; shipwreck, lightness of the plank, absence of another means of salvation. The rights

of either remain as unassailable as before; neither one of the two parties interested, nor a third party, may, without inflicting a wrong, directly assail the other's right. To take sides, for instance, with the life reputed the worthier, would be a deed not of right but of expediency. It would be without doubt a breaking of God's commandment: The innocent and just person thou shalt not put to death (Exod. xxiii. 7).

I suppose that after all the foregoing statements Prof. Treub will insist: Speculatively, from your so-called Christian* point of view, nothing can be said against your reasoning, still for this quite extraordinary case with which we are busy just now, I can not but deem the attitude of the Holy Office as unwise and exceedingly narrowminded.

Permit me to say, firstly, that the charge of narrowness brought against the Church and her ethics by a non-Catholic strikes me as a surprising variation from the old stock-charge of elastic and Jesuit-

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* Elsewhere Prof. Treub opposes to the Christian, merely Biblical conception of the ethical side of the question—his own view, which he styles natural-historical. According to this view, in keeping with which he lays down his moral principles concerning the punishableness of abortion, (1) the fact that the end of cohabitation has been attained can not of itself be something punishable, because the right to cohabitation, as an act by which the bent of nature is satisfied, stands altogether by itself. And, as far as that is concerned, the preservation of the race is not to be reckoned with. (2) The not yet viable fetus can not be considered as a man, but merely as a conglomeration of cells, which has no objective right to live. With such a natural-historical conception one could soon gather a system of moral principles the ethics of which would be detected only by microscopic examination.

ical morality. In reality, the Church deserves neither one nor the other blame, particularly not that of narrowness, now under consideration. Her aversion to stickling for principles as regards the application of her own positive ecclesiastical, and, therefore, human precepts, is clearly shown by the universally recognized rule of jurisprudence and moral theology, according to which merely ecclesiastical precepts lose their binding force, when their observance in a special case would involve great harm or inconvenience.* That aversion is evinced also by the comparative ease with which at times the Church grants dispensations from her rules if there are good reasons. The case is altogether different as soon as we leave the domain of ecclesiastical and merely human legislation, to enter upon that of the law given by God Himself, especially the natural law. Herein not only the Church, but also sound philosophy,† discerns an immutable standard of right and wrong, a law as unchangeable as the eternal and infinitely wise plan according to which it has been given; here, no matter what reasons of expedi-

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* *Lex humana non obligat cum gravi damno vel incommodo.*

† Even Cicero wrote, as Lactantius witnesses: Right reason is indeed a true law, which agrees with nature, is to be found with all people, constant and perpetual, whose commands urge us to duty and whose prohibitions deter us from wrong. We may neither oppose nor alter this law nor trespass against it, nor can it be altogether repealed. Neither the Senate nor the people can free us from that law. Nor is that law different at Rome from what it is at Athens, now such and later otherwise, but one, everlasting, unchangeable, this law rules all nations at all times, and the one God is the common Master and Commander. He is the Originator, the Author and Giver of this law.

ency present themselves, derogation, dispensation, or accommodation is out of the question; here, then, the Church must inflexibly hold that as unlawful, whatever, according to this standard, she judges as intrinsically evil.

To what lengths we shall come if one may pit against principles of morality one's so-called practical sense, one's expediency, may be inferred from the very elastic definition of medical abortion given by Prof. Treub himself: "By artificial abortion is meant the breaking off of pregnancy, done for good reasons, before the fetus is viable, consequently before the twenty-eighth week of pregnancy. *The life of the child is not considered here,* and the general inducement for procuring such abortion are the dangers which, in consequence of pregnancy, threaten the health or the life of the mother, and for which there is no other remedy, *or for which the woman refuses to take other remedies.*"* I took the liberty of emphasizing the words containing the doctrine that either the life of the child is held venal or that the end readily justifies the means. If such teaching is unassailable solely because it is broached by the fashionable medical science, then it is incon-

* Leerboek der Verloskunde door, Prof. G. H. v. d. Mey, completed by Prof. H. Treub (Haarlem, 1898-1900), first part, p. 354. From the many directions given there by Prof. Treub concerning the procurement of abortion, as also from his warnings to exercise prudence in diagnosing, it is indicated that the fetus' life is exposed to the carelessness and incompetency of certain doctors who too readily desire to betake themselves to abortion. Nor is it a reckless supposition to hold that in some cases expediency, or the love of ease, will throw principle overboard.

ceivable why our Penal Code still threatens with severe punishment the practice of abortion. For—and here I pass from ethical to judicial ground—wilful abortion is not only a sin, but, according to Dutch law, it is a punishable crime.

We heard Prof. Treub ask the question whether the Dutch lawmakers will permit a college of priests at Rome to dispose of the lives of Holland's fair women without offering resistance, adding, to use his own words, " To my mind, that would be unworthy of a Dutch legislator."

And why should this be unworthy of the *Dutch* lawmaker only? For neither the French *Code Pénal* nor the *Strafgesetzbuch für das Deutsche Reich,* nor, to my knowledge, the penal law of any other civilized country, has deemed it improper to allow clergymen to advise in like matters of conscience as bidden by their duty. Why should we in our land of liberty of conscience make exactions which have not been dreamed of even in the empire of the *Kulturkampf,* nor in other countries where the Church has been, or is, persecuted? Above all, how is it possible to justify the means for which claim is made, when everybody, not excepting Prof. Treub, knows that *this means, opposed by Catholics, is of a nature as to make it liable to prosecution and punishment?*

However absurd it may seem, it is a fact that Prof. Treub desires to punish those who, by opposing medical abortion, strive to hinder a deed set down as punishable by law! The professor puts forth in the following words a remarkable pretension: " Should the Dutch

legislature refuse to acknowledge that the law is equally binding for every citizen, and thus admit that a certain group of them are free to set the decree emanating from Rome above the Dutch law, then the Penal Code must needs be amended."

That our readers may judge for themselves who, according to Dutch law, are really Moloch-worshippers, *i. e.*, sacrificers of children's lives, I here quote the statute in full. In title xix. of the Penal Code, under the heading *Misdemeanors Against Human Life,** we find:

> Art. 295. The woman who designedly causes abortion, or the fetus' death, or allows such to be caused, shall be punished with imprisonment not to exceed three years.
>
> Art. 296. He who deliberately causes abortion, or the fetus' death, without the mother's consent, shall be punished with imprisonment not to exceed twelve years.
>
> If the woman's death results from it, he shall be punished with imprisonment not to exceed fifteen years.
>
> Art. 297. He who deliberately causes the fetus' abortion or death, with the mother's consent, shall be punished with imprisonment not to exceed four years and six months.
>
> If the woman's death results therefrom, he shall be punished with imprisonment not to exceed six years.
>
> Art. 298. Physicians, midwives, and druggists, accomplices to the misdemeanor described in Art. 295, or guilty of, or accomplices, to the offense described in Arts. 296 and 297, may incur increased penalties, and may be deprived of the profession they exercise at the time they commit the offense.

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* EDITOR'S NOTE.—The laws of the United States, unlike those of Holland, make distinction between *therapeutic* and *criminal* abortion; they

Whosoever reads these statutes can not help but perceive, what Prof. Treub found for himself when writing his *Treatise on Obstetrics,* namely, that the *Penal Code holds him or her punishable who deliberately causes the fetus' abortion or death, no matter what are the medical reasons for such deed.**

This is why, on the same page of his book where above quotation is found, Prof. Treub exhorts doctors not to decide too hastily upon

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exempt abortion from penal liability when it is necessary to preserve either the mother's or the child's life (*i. e.,* therapeutic abortion).

According to some of our authorities, it never was an act punishable by common law to commit abortion with the consent of the mother, provided it was done *before* the child became quick; but others are not even disposed thus to restrict the criminal act, and hold that it may be committed at *any* stage of pregnancy.

The Supreme Court of Pennsylvania (in Mills *v.* Com. 13 Pa. St. 630), however, observes: "It is a flagrant crime at common law to attempt to procure the miscarriage, or abortion, of the woman, because it interferes with, and violates, the mysteries of nature in the process by which the human race is propagated and continued. It is a crime against nature, which obstructs the fountains of life, and, therefore, it is punished. The next error assigned is that it ought to have been charged in the count that the woman had become quick. But, although it has been so held in Massachusetts, and in some other States, it is not, I apprehend, the law in Pennsylvania, and never ought to have been the law anywhere. It is not the murder of a living child which constitutes the offense, but the destruction of gestation by wicked means and against nature. The moment the womb is instinct with embryo life, and gestation has begun, the crime may be perpetrated."

The statutes enacted on this subject in most of the States fail to draw any distinction between the commission of the offense, or attempt at commission, before and after the quickening of the child in the womb, making it a felony in either case.

* *Leerboek der Verloskunde,* Part i., p. 355. (Italics are mine.)

abortion, nor without consulting a colleague. Although it is not likely, in his opinion, that a physician "*would be found guilty and sentenced for the deed mentioned, the risk of judicial prosecution, even though followed by an acquittal, is disagreeable enough to spur us on to guard against it as far as possible.*" Elsewhere* Prof. Treub showed also considerable uneasiness about the possibility of a judicial condemnation, and he complained of the legal uncertainty to which doctors are exposed when producing abortion according to the rules of their profession. He winds up with the exclamation: "*We must have certainty, and this we have not as long as the law lacks an explicit statement upon this point.*"

The professor is fully alive to the fact that he is not within the law as actually in force in Holland; of this he is certain, notwithstanding the assurances of many lawyers that a physician acting agreeably to the rules of science would not run any risk.

This fact is also realized and explicitly acknowledged by Minister Cort von der Linden, who has proposed an amendment—a novel one indeed, to Articles 296 and 297 of the Penal Code in favor of medical abortion, with the explanation that it is necessary, in order to secure the free and untrammeled exercise of obstetrics, because, as yet, *the operation consisting in the ejection of the fetus has the character of the punishable deeds described in these articles.* Therefore many doctors will, through fear of prosecution on the

* *Tijdschrift voor Strafrecht*, Part ix. (1896), p. 9.

strength of one of these articles, refrain from performing this operation, even when necessary for preservation of the woman's health or life.

Consequently, the lawyers' assurances referred to seem to avail nothing. Where, on the one hand, the law clearly describes the misdemeanor, and, on the other, does not contain anything like exemption of physicians, one must needs appeal to the principle of penal law.

Some, indeed, presume to find such principle in the claim that the law requires not only a mere design, but an evil design, in order that the offense described in Articles 296 and 297 may be regarded punishable. This evil design does not exist, they assert, in medical abortion. But there is no room for such fine distinction between mere design and evil design in the system according to which our Penal Code has been framed. According to that system, punishable design is the intention of doing a deed punishable by the Penal Code, or "the conscious bent of the will to a definite misdemeanor." The law requires no more to make a deed a misdemeanor, and should one demand, as some think should be demanded in regard to medical abortion, that the law should exact more requisites for a misdemeanor, this can not do away with the fact that under present circumstances no more are exacted. And the interpretation must conform to present requirements. One may find, or fancy, that the lawgiver's system leads in some cases, for instance the one under discussion, to undesirable results; it is not the inter-

preter's but the lawgiver's task to forestall such results. Even granted that medical abortion should by right not be punishable, that can be no reason to read the law differently from what it is, no reason to exempt from liability him whom the law does not exempt. Accordingly, the privilege of putting medical abortion beyond the reach of Articles 296 and 297 must be sought elsewhere. Equally unavailing is the pretext advanced to put an operating physician beyond the reach of Article 300 and following (malpractice), namely, that there is *no design of doing something punishable.* A medical operation, forsooth, has not the nature of malpractice, and is altogether different from the misdemeanor of that name. Not so with abortion. Even though it is produced with a view of saving the mother's life, it assumes the character of that deed which is described in the law as a misdemeanor against life, *viz.*, against the fetus' life.

Lastly, Mr. Noyon thinks he can find justification for abortion in desperate emergencies. In fact, Article 40 of the Penal Code says: "Whoever commits a deed to which he is driven by superior force is not punishable." Mr. Noyon makes this article applicable to our case by submitting that the physician acts under a pressure of circumstances which he is not bound to resist, as he could not morally justify such resistance.

Albeit, I readily own, that, by superior force or duress, must be understood not only physical compulsion, but also, and particularly so, moral (psychic) compulsion, and even the so-called

"Nothstand" (necessity), it is hard to define the limit of what may be held as done under pressure of superior force, nevertheless, in my opinion, Mr. Noyon extends that limit too far. Any act not morally justifiable might then be attributed to superior force, and this would legalize deeds of revenge, duels, lynching, etc.; it would authorize the applying of the principle "*la propriété c'est le vol*" (property is theft), to Jameson raids, in short, to all sorts of crimes that are now being perpetrated around us. At all events, according to other jurists, the physician who, in order to save the pregnant mother's life, decides to kill the child, is not placed under such compulsion; he is not driven by any force, or pressure, which he can not resist. No wonder that Prof. Treub has expressed doubt as to whether all judges would agree on the broad understanding of Article 40 of the Penal Code. Thus it is evidently very hard to justify the exemption claimed by some jurists.

The question whether such exemption could be morally justified in a state which calls itself Christian, I shall not answer myself. I'll rather leave it to my learned opponent. The answer which Prof. Treub gave in 1896* shall serve here as the best justification of the Catholic interpretation, of which he hopes to rid us by threat of punishment. There he expressed himself in an altogether different way. His opinion then was, that, as long as our Penal Code is dominated by the ideas of Christian morality, and as deliberate

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* *Tijdschrift voor Strafrecht*, Part ix., p. 13.

abortion is consequently regarded as a punishable misdemeanor, to make an exception in favor of medical abortion would be an inconsistency and a wrong: "*If we bow to the Christian interpretation, then the penal law should be more explicit; then the untimely stopping of pregnancy can not be allowed under any pretext; then the unwritten law, 'A physician acting according to the recognized rules of his art is not punishable,' must be set aside, and the rule of medical science which prescribes the untimely breaking off of pregnancy must be deemed conflicting with the morality of the state. Then also optional sterility must be made punishable.*" Such is the mind of the Catholic Church, which has, at least, the courage of her convictions!

Now, as Dutch law still holds the oft-mentioned misdemeanor as invariably punishable, and as the same law does not distinguish between medical and criminal abortion, and, according to Prof. Treub, should not exempt it, may I not then, after appealing to the professor's respect for our existing law, as also to his well-known fairness and consistency, conclude by politely inviting him to withdraw the charge that we, as Catholics, by our opposition to medical abortion mentioned, put ourselves above the Dutch law?

Should Articles 296 and 297 ever be amended in favor of medical abortion, and should Prof. Treub then wish to propose his amendment, then I beg leave to suggest that it should be placed elsewhere than under Title xxi.: *Causing death or bodily injury by wilful fault.* In the first place, it can not be said that a clergyman

by pointing out a duty of conscience causes injury. In reality, he neither causes nor hinders it; he leaves the patient entirely to her conscience; she is, apart from her conscience, quite free to deviate from the advice given. Where is the connecting link between the clergyman's act and the woman's death?

For in so far as the clergyman might be said to be fault of the woman's death, his act can not be called a *fault* in the strict judicial sense, but would have to be looked upon as *design*. *Fault*, gross fault even, supposes some lack of reflection, as well as the failure to foresee the evil results of the act, which one could have foreseen by due consideration. Thus, fault exists only where there is want of reflection, ignorance, imprudence, or, at most, recklessness; not, however, where, as in our case, some one acts with open eyes and due deliberation. Thus, there being neither fault nor design on the part of the clergyman, he can not be held guilty.

I trust that Prof. Treub will not take his proposed statute seriously, even though he has composed it most elaborately. For what would it accomplish? Catholic clergymen* would not leave off doing their duty, for they also would act under pressure of *superior force*. And the Holy Office? It also, when there is, as here, question of principle, and not of human precept, yields neither to minority nor majority of popular opinion. Indeed, if, what God forbid, the majority of the Dutch people and the Dutch legis-

* I may presume that our separated Christian brethren would do likewise.

lature should ever wholly break with morality, to adopt in its stead ethics of the *natural-historical* kind, then the Catholic Church, eventually constrained to fight, will continue to the end to show the courage of her convictions in this struggle for the highest principles.

THE RIGHT TO LIFE OF THE UNBORN CHILD.

BY PROF. H. TREUB, M.D.

> No one is bound to expose his own life to great danger to save another's temporal life, unless some other reason constrain him.—A. Lehmkuhl, S.J.*

My article in the periodical "*Tijdschrift voor Strafrecht*" has called forth two replies, Dr. R. van Oppenraay's, S.J., and Dr. Th. M. Vlaming's. Both are published here, preceding this writing, and they afford me a welcome opportunity to go more deeply into the subject. Of a debate, in the strict sense of the word, between these gentlemen and myself there can be no question. Our standpoints are altogether different. For, as I heard one of my learned friends of the bar say on a certain occasion, it is quite impossible to fight a duel with an opponent, standing at the opposite end of the hall, when the weapons don't quite measure one-tenth of the hall's length. In the following I will try, by placing myself in the standpoint of my learned opponents, to fight them now and then on their own ground. Chiefly withal I will defend and explain

* *Magnum subire vitae propriae discrimen pro aliena servanda vita temporali, nisi aliud quid accedat, nemo tenetur.* Theologia Moralis. Editis sexta, 1890, Vol. I., p. 502.

more fully my own standpoint, though some polemical observations can hardly be dispensed with, were it merely to show, that I am put in an undeservedly false light. That which I justly deserve from my opponent's standpoint is bad enough.

In the first place, it is unjust to say that I charged the Catholic Church with Moloch-worship. I simply spoke of any ecclesiastical prescription which degrades the service of God into Moloch-service. Surely there is no need of my pointing out to Prof. Vlaming that this is unlike the charge which he preferred against me, as the decisions of the Holy Office are not a fixed and unchangeable part of the Catholic religion. They lay down the rules of morality to be observed by the faithful. They contain the ethics distilled out of the tenets of religion; but to the distiller, the Holy Office, it may, according to its own admission, happen that one or the other element becomes overdistilled. The Catholic who does not abide by the decrees of the Holy Office sins, more or less grievously, according to the importance of the prescription which he disregards. Yet, even for the most faithful Catholic, these decrees are a lawful topic of comment and discussion, and he does not sin in the least by doubting their correctness. It would be otherwise if the Pope had decided the matter *ex cathedra;* for the Catholic who rebels against such a decision ceases *ipso facto* to be a Catholic, and becomes a heretic. Were this the case with regard to the subject which occupies us, then I should have to say from my standpoint that the Catholic religion *is* a Moloch-worship. Fortunately, such is not the case, as

it is but a decree issued by the Holy Office, which tends thus to degrade the religion in its practice.

Equally undeserved is Dr. van Oppenraay's accusation that I would put the Catholics to the test as to which they would recognize as Supreme Judge of morality, the State or the Church.

The capital difference between Drs. Vlaming, Rev. van Oppenraay, and myself, is this, that they see in the production of abortion a transgression of the commandment: "Thou shalt not kill," whereas I, even after carefully perusing their articles, abide by my opinion that such an interpretation of the precept in the case is *narrow. They* hold one life as valuable as the other; *I don't.* To my mind, the life of a woman, the mistress of the house and the mother of a family, is worth more than the life of a three months' fetus, which, even barring extraordinary circumstances, such as the mother's death during pregnancy, has only about eighteen per cent. of a chance to be born alive, and, after birth, has only twenty per cent. of a chance to live beyond the first year. Therefore, I do not object to abortion where the pelvis is absolutely too narrow. True, here science and faith do not as yet perfectly agree, but by and by, as the *technique* of surgery develops, medical and theological ethics will come into closer harmony. The same holds good as regards craniotomy of the full grown fetus.

My celebrated colleague, Pinard, of Paris, had these words painted on the walls of his lecture-room: *Craniotomy on the living child has had its day.* With many other doctors I consider this

utterance too sweeping. It is not long since I performed that revolting operation in my clinic. Yet some months previously, I had published the following opinion showing that here also the ethics of medicine and of theology meet each other:

"At present one may scarcely ever decide to perform craniotomy on the living child. Even when the mother is already infected when coming to the hospital, I hold the wanton sacrifice of the strong and healthy child as unlawful, and I draw the line of consistency so far as not to allow either the patient or her family to have anything to say in the matter. The woman trusts herself to me, that I may deliver her, and thus it is with me a matter of conscience how I shall dutifully perform my task."*

Alas! also from recent experience I know better than Prof.

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* *Zur Indikation des Kaiserschnittes. Aertzliche Rundschau,* No. 12, 1900. To prove that in regard to this, I adopt a rather uncommon standpoint, I here subjoin a quotation from the *Semaine Médicale* of October 23, found there by me just after having finished this essay:

"At the opening session of the Bordeaux Court, Mr. Maxwel, substitute of the Supreme Judge, examined various medical cases of conscience, from which I cull the following:

"The surgeon is with a woman whose pelvis is so contracted that spontaneous delivery is impossible. The child, to whom every natural entrance into the world is closed, is mature and living. The surgeon deems a bloody intervention necessary, but the mother refuses to submit to it, her parents and her husband are opposed to it, and want the surgeon to perform an apparently simpler operation, to which, however, the child must succumb. What must the physician do?

"According to Mr. Maxwel the relative rights of the child must yield to the mother's actual rights, as the child's rights depend upon the mother's willingness to renounce her bodily integrity, and as this renouncement is the condition to which the existence of those rights is subordinate. This con-

Vlaming, what are the dangers of cesarian operation for the mother, yet I fully maintain the words quoted.

But, in the case that occupies us, circumstances were quite different. By hastening the unavoidable death of the young fetus the mother's life could be saved; whereas, by letting the fetus die a natural death, the mother's life, too, was sacrificed. Thus, when Prof. Vlaming writes: "Because of its intrinsic aim the operation is and remains a deliberate taking of an innocent human life, and consequently unlawful in itself," I should like to submit: "By its intrinsic aim the operation is, *in this case,* deliberately *causing the death of an innocent life, which would soon be extinct at all events, to save another life, and, consequently, the operation is not only lawful, but it is unlawful to omit it.*"

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dition is altogether within the mother's power. Our judicial training can not see that the mother is obliged to yield to her child. As, on the other hand, the mother is in a state of lawful defense against all intervention injurious to her bodily integrity, and, on the other hand, it is impossible to say that the cesarian section or symphyseotomy will not have untoward consequences, it follows hence that, as mistress of her body, free to authorize or forbid such intervention, the mother may object to cesarian section or symphyseotomy, and may ask the doctor to resort to embryotomy. If she can not manifest her will, the choice will lie with her husband, her parents, or her relatives.

"If you operate on the mother in spite of her, or simply without the knowledge of herself and her family, and she dies as a result of the operation, will you escape a damage suit? I don't think so. In that case, the doctor's responsibility will flow from a certain judicial fact: The violation of the right which belongs to the patient alone or to those who represent her (or him), when she (or he) can not manifest her (or his) will of determining the conditions in which she (or he) will authorize any hurt to her (or his) bodily integrity."

I modified the sense simply by substituting "causing the death" for killing, although, to satisfy sticklers, the proposition that *causing abortion is not always killing the fetus* could easily be defended.

Nor did I strike out "innocent," albeit one could, without quibbling, question the fetus' innocence in case of uncontrollable vomiting. But, I waive this also, because, to be honest, to me it is of no consequence. Nor does it matter that Prof. Vlaming takes it that I am of opinion that in this case the fetus is an unjust aggressor against the mother's life. What boots it to defend or impugn positions arbitrarily ascribed to me? I did not use the argument alleged by Prof. Vlaming, nor did I know that it is still current in universities. Therefore, I have done with it.

There is no question of an *immediate* aim, as the reason why the operation is performed is ultimately the intrinsic aim of the operation, and thus qualifies its morality.

By killing the fetus, in a case like this, in order to save the mother, I sin no more against the fifth commandment than I do when I lose the mother by performing the cesarian section to save the child. Neither in one nor in the other case do I commit murder, in the accepted meaning of the word. In the judgment of such as are not sunk in philosophical speculations, but who calmly and soberly consider the matter, the transgressor of the precept "Thou shalt not kill" is not he who, in a case like ours, hastens the destruction of a fetus doomed to certain death, and thereby saves the mother; but, on the contrary, he who lets the mother die without gain or necessity.

Hence my italicized exclamation, which Prof. Vlaming has quoted: *There lies a young woman murdered by the narrow decrees of the Holy Office.*

Prof. Vlaming writes: "To a doctor like Prof. Treub, with whom his knowledge devoted to the relief of suffering humanity occupies the first place, it must doubtless be painful to see a patient, whom he believes he can save without fail, prefer death to the transgression of a certain principle, which to her is sacred, but which the physician does not thoroughly understand. Such spectacle must, no doubt, be painful, but that does not take away the reasonableness of the principle, and consequently the reasonableness of the decision which sets forth that principle."

To this I beg leave to make the following observation: To my mind the reasonableness of the principle is by no means proven by paraphrasing the precept, "Thou shalt not kill," and the principle, "One may not do evil that good may come."

Yet, these are the only weapons with which Dr. van Oppenraay and Prof. Vlaming fight me. On that we shall never agree. We are standing at opposite ends of the hall with short swords in our hands. To combat with any hope of victory is thus impossible, unless one of the parties goes closer to the other. I shall cheerfully try to do this, and I hope to succeed better in doing so than Prof. Vlaming has.

I am not interested in the unjust-aggressor argument, and, as to his subsequent remarks, I shall content myself with some marginal notes. Nor shall I expatiate on the positions of the two drowning

men. Such comparisons would, methinks, be of value only if they were quite perfect. But, as ever, the comparison is here also lame, and, what is more, it limps on both legs. I take the liberty of pointing this out:

"The right to live of a drowning man comes, as a rule, after that of one as yet in a safe condition, and thus, also, the mother's right to live comes after the child's. These two rights don't clash, as long as one leaves the other unmolested." Thus speaks Prof. Vlaming. That is not correct. The two rights *do* clash. For the fetus' life wholly depends upon the mother's. If the mother dies, the fetus dies too. If, on the contrary, the fetus dies, the mother will be saved. Apparently it would be more correct to speak of a clashing of interests, but only *apparently*. For the fetus in either case is lost, and its life is not of the least importance to it. In this way does its right to live, which is of value only theoretically, clash with the mother's right to live.

I must also protest against the comparison which he brings up a few lines further: "To be partial to the life which is supposed to be of the greater value would be a deed not of right, but of expediency." In our case no partiality is shown to the supposedly more precious life, but simply to the only life which can be saved. The other can not be saved, and is, therefore, valueless. A few pages ahead my esteemed opponent has observed that I do a moral evil in order to ward off a physical one, but, on that account, I repeat that his paraphrases on "Thou shalt not kill" are no more convincing to me than

my opinion convinces Prof. Vlaming that killing the fetus in this case is a merely physical evil.

That is just why Prof. Vlaming supposes that it is my utilitarian sentiment that led me to defend the procurement of abortion. He is right; and I'll also grant (overlooking the fault of the comparison) that for such as admit the fetus' absolute right to live, backing it by the decalogue, for such my deed would be based on expediency and not on right. If ever, here would be verified: "*Supreme right is a supreme wrong*" (*Summum jus, summa injuria*). Against the cases cited by Prof. Vlaming, I will pit another, a case in which I, and, I trust, all physicians, would resort to a deed of expediency.

When at the term of pregnancy, the physician discovers on the neck of the womb a cancer so extensive that removing the formation is out of the question, he knows by experience that the delivery can take place spontaneously. The ulcerating tumor is then slowly split by the child's skull, and, thanks to this slow process, the blood vessels close up, and the bleeding is, generally at least, comparatively small. The woman has then a good chance to live.

But—experience teaches also that, owing to this slow labor, the child usually dies under way, and is still-born.

In such a case the cesarian section is fatal for the woman. Not that she will necessarily succumb to it immediately, but because of it she certainly will die sooner than would otherwise be the case.

Well now, the physician who, in my opinion, has the right conception of his duty, will, in this case, perform the cesarian operation

without hesitating, and thus he will take sides with the only life which can be saved. That is the child's.

Let no one object that there is no question of "positive" murdering of the woman. Has President McKinley not been murdered just because he lived for a few days after he was shot? Furthermore, I have just said that, for him who wants to stick to the letter, abortion will not be positive murdering of the fetus either.

In my judgment there is no ethical difference; if the Holy Office forbids the one, it should also forbid the other.

Before taking leave of the cases cited against me, I must show that Dr. van Oppenraay's comparison with *Case A* is not at all to the point. In that case, it is altogether unnecessary that one—let alone two—human lives should be sacrificed. Accordingly, what the woman does or does not in that case may be left out of consideration.

In our case, I repeat once more, one life was bound to be lost, not through barbarous man's will, but through, what I shall call, barbarous nature.

His comparison is furthermore, methinks, too lame to be of any service.

As I proceed I must first vigorously defend myself against a misconception put by Prof. Vlaming upon my former utterances.

Prof. Vlaming claims that I had said the fetus WHICH IS NOT YET VIABLE may be looked upon not as a man, but as a conglomeration of cells, thus as something which has no *"subjective right to live."* I underscored some words, and will do so again in the following quota-

tions from my paper on "Abortion and Penal Law": "If, on the contrary, there is a question of a subjective right, then it is not consonant with sound reason to compare an embryo in the first weeks of pregnancy with a fetus in the last months." And two pages further: "If one admits that there is question of subjective right, then the articles of the Penal Code are simply ridiculous as far as the FIRST STAGES of pregnancy are concerned. For in the BEGINNING OF PREGNANCY there is nothing resembling a man, there being nothing else than a conglomeration of cells. One's brain must be frightfully muddled to speak of this conglomeration of cells as of something which has a subjective right to live."

The above words in small capitals show clearly that Prof. Vlaming has misconstrued my meaning. And I have quoted the last paragraph to bring out how unfairly he treats me when he exclaims: "With such a natural historical understanding one could indeed make up a fine system of ethics where one would need a microscope to discover the ethics."

Far be it from me to accuse Prof. Vlaming of intentionally misconstruing my meaning. No doubt he just read my article somewhat hurriedly, and I will be the last to find fault with another's haste.

As I am now busy defending myself against the groundless, false charges of Prof. Vlaming, I may make some observations relative to others of his remarks.

Instead of giving me credit for exhorting to prudence in diagnosing doubtful cases, the professor uses my exhortations to support his

claim that the fetus' life is exposed to the carelessness and incompetency of physicians. While I repel the supposition following thereupon as quite wanton and wholly unproven, I must confess my amazement that Prof. Vlaming deems it necessary to bring forth his claim as a new discovery. As long as there are among doctors, as well as among clergymen, and as well in all other walks of life, men who are unscrupulous, reckless, or of mediocre capacity, man runs the risk of having his life exposed to the carelessness or incompetency of physicians. Oh! the pity of it, but it is true.

Now, one thing which I should like to prevent is, that the pregnant woman should be further exposed to this risk by a conflict of medical science with, what I deem, the narrow decrees of the Holy Office.

This induces me to make the effort of placing myself upon the standpoint of my opponents, in order to show that I am justified in speaking of narrow decrees.

Allow me first to quote some more lines of Prof. Vlaming's: " The case is different as soon as there is question, not of an ecclesiastical, or merely human law, but of the law given by God Himself, especially the law of nature. Therein not only the Church, but sound philosophy, sees an unchangeable standard of good and evil, a law which can no more be altered than the eternal and infinitely wise plan to which it is linked; therefore, no matter what reasons of expediency may be on hand, there can be no question of derogation, dispensation, or accommodation, consequently the Church must hold in-

flexibly to the unlawfulness of whatever she finds intrinsically evil."

Those words are pregnant with fervor and dignity, and I realize how within the reader thereof rises the thought: "Say something against that if you can? What objection can be raised against that?"

For argument's sake, I will admit that, as Prof. Vlaming writes, we have to do here with *the law laid down by God Himself*, and particularly with the *law of nature*. I trust I mistake not in thinking that by the law of nature is meant the decalogue.

Now, it says, "Thou shalt not kill," without any restriction. Then Catholic morals must also absolutely and unreservedly forbid *capital punishment*. This the Church does not do. That the supreme public authority has the right over life and death, or has the right of the sword, is suggested by reason and confirmed by Holy Writ (Rom. xiii. 4). It is made the duty of the supreme public authority to exercise vindictive justice in order to guard and protect public safety, as well as to restore the disturbed order; that both may be done effectively, it is thought necessary that the death penalty should at times be inflicted. So speaks Lehmkuhl in his standard work, "*Theologia Moralis*," Vol. I., p. 837, which, I believe, is an authoritative text-book used in many seminaries. "But, you forget," cry out my adversaries, "that the chapter you quote bears as title, *De Cruenta Punitione* (on Blood-Punishment), and that it is written also: *Whoso takes the sword shall perish by the sword.*" No; I don't lose sight of that, but are not both, the decision: There can be no

meddling with the law of nature, and the precept: "Thou shalt not kill," absolute commandments? Yet here Catholic morals make an exception. But man forfeits his life not only as a penalty for murder. Capelmann, known as the author of a "Pastoral Medicine" rather than as an authority in moral theology, but whose name and authority are eminent in Catholic circles, writes:* "The first right of all men is the right to life, and this life is inalienable and unassailable, unless man forfeits it by going against Divine and human legislation, and *upsets all order of nature and society.*"† If this is not tampering strongly with the law "Thou shalt not kill," I don't know what is. Still, to my knowledge, Capelmann's book has never been condemned by authorities in moral theology for that sentence.

It is a fact then, that, as regards capital punishment, the law established by God Himself, and particularly the law of nature, is not held as an immutable standard of good and evil. Nor has sound philosophy, or unadulterated *Catholic* philosophy ever set up an iron-bound law for the case on which we are engaged. To prove this, I shall content myself with some quotations from Lehmkuhl's aforesaid book: "To cause abortion deliberately seems to be lawful when there is on hand a danger to the mother's life which can be warded off only by the ejection of the immature fetus."

Raising the question whether the causing of abortion is lawful in

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* *De Occisione Foetus.* Aachen, 1875, p. 23.

† Italics are mine.

order to forestall the cesarian section, Lehmkuhl says: "No one is bound to put his own life in great danger to save another's, unless some other reason constrain him"; and a little further on: "But, even should it be plain that the seven months' term can not be awaited, I think that as soon as it is evident that the fetus has grown so much that a further growth would become fatal to the mother, then it is lawful to cause abortion, but by no means before that time." Again: "But if other diseases are the cause of the mother's present danger, and the ejection of the fetus seems conducive to the mother's salvation, one must *first* use other remedies which afford some hope of saving the mother; but, if these prove unavailing, then, as in the former case, abortion may be procured, if there is good hope of saving the mother, who would otherwise perish, provided the hope of baptizing the child is not lessened by the abortion. For whether abortion is procured or not, the fetus shall certainly die immature; in fact, there is danger of its dying before baptism can be administered; whether this danger is greater or less, the doctor has to decide. If the fetus' ejection lessens this danger, it will be more lawful to eject it to save the mother. For then you have from the acceleration of childbirth a double beneficial effect: The removal of the danger to the mother's life, and the greater probability of conferring baptism."

A more brilliant justification I could not and do not wish for. In the last lines quoted I have just what I have set forth as my own standpoint in this matter. Behold a true son of the Church, a

famous Catholic divine, a man whom Prof. Vlaming will not consider lacking of sound philosophy, who shares my opinion that the precept "Thou shalt not kill" must not be interpreted so narrowly as the Holy Office maintains, and who consequently must say that I am right in calling the Holy Office's decree narrow.

I could well afford to end with this the discussion of the moral side of the question. But it will be claimed that I quoted an *old* edition of Lehmkuhl's book. True, though that edition is only eleven years old, that what seemed lawful to him then, does no longer appear so to him now. Instead of the words given above, he has now: "Deliberately to cause abortion in a present danger to the mother's life, a danger which can be removed only by the ejection of the fetus, formerly seemed permissible to me; but now we must deny that it is so, and it is not safe to act up to my former opinion, as will appear from a decree of the Holy Office which I shall give further on."

This proves nothing more than that Lehmkuhl is a very obedient son of the Church; but it certainly does not justify Prof. Vlaming in speaking of an unchangeable law established by God Himself, as it is only in 1895 that the law has been so explained as to make unlawful the abortion to save the mother's life. Honestly, I do not pretend to consider my personal opinion on moral subjects as final; neither do I propose to accept as such the personal sentiment of the Holy Office, which, without meaning any offense, I can not qualify otherwise than a college of priests at Rome. I absolutely refuse to recognize such authority. I am totally indifferent to the decisions of

the Holy Office in matters belonging merely to the moral and religious domain. Not so when the Holy Office's decision encroaches upon my first duty as physician, to take care of the lives entrusted to me, and doubly so when the Roman congregation acts, as it were, out of respect for the natural life.

Accordingly, I hold it not only a right, but a *duty,* to declare my determination to resist it. I care not if Catholics blindly submit to the Holy Office's pronouncements. But mine is the freedom to defy such decisions, and to expose the harmful results they may have to the health and lives of many women.

Let me point here to another pernicious result: The Catholic Church curtails the liberty not only of her own members, but also of outsiders. For the Catholic physician will not dare, as long as this decree obtains, to speak of the possibility of procuring abortion to any patient of his, regardless of her belief, not even in the case where the patient desires the operation on proper moral grounds, much less shall he dare to advise it, still much less to perform it.

Such is the natural consequence of the decree.

Yet I can assure my readers that there are many Catholic physicians in Holland who concur in my judgment concerning the Holy Office's decree. I will not name any, and I care not if some do not take my word for it.

I now close my paper with an extract from Lehmkuhl's last edition, which conveys the impression that he does not heartily bow to the Roman decision. Regarding the obliterated passages of the old

edition quoted by me, I must say that abortion, there referred to, means craniotomy. Consequently there is no question here of passages of an old edition kept in the new by accident, but of a maturely considered utterance which is pertinent here. Lehmkuhl holds: "As these cases, apart from Church pronouncements, are not so clear and evident, it may happen that the physician resorts to abortion or craniotomy in good faith, when otherwise the mother's condition is hopeless. Under such circumstances *it lies with the priest's prudence* to decide whether it is better to warn him or to pass the matter over in silence, if only the physician take care that the fetus be baptized in the mother's womb ere he kills it with his instruments." *

Were Lehmkuhl really convinced that abortion is always forbidden, always sinful, he would not leave the matter to the priest's prudence. Then he would have said: Should the physician be about to perform the operation in good faith, he must be forbidden to do so, and if he has already performed it, he should be punished.

A few words on the juridical aspect of the question.

I say once more that I have not the least desire to see a Catholic priest go to jail, and in that respect the juridical side of the question does not concern me. I worded my first article as I did simply to obtain the views of the Dutch people or of their representatives.

I should have spoken of design, rather than of fault, I confess, but, unlike Prof. Vlaming, I am not a jurist. Again Prof. Vlaming

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* Theol. Mor. ed. ix., i., 841 v. (Italics are Treub's.)

is right in saying that in the literal sense the clergyman neither forbids nor hinders aught by pointing to the duty of conscience prescribed by the Holy Office. But I called attention to the fact that the priest is here nothing else but the mouthpiece, or the tool, of the Holy Office. He is a conscious organ indeed, an agent endowed with free will and reason. Still, this being granted, I will also admit that, as far as the *letter* is concerned, there is neither forbidding nor hindering. But there is in *reality*. No one will maintain that a person brought up in a certain religion, remains altogether free in his judgment of the prescriptions of that religion. Education, instruction, and habit give the conscience of the Catholic, the Protestant, the Jew, and the freethinker, a peculiar bias. To prescribe and to recall to the mind a duty of conscience is really equivalent to forbidding or hindering. On the basis of this argument, I hold the agent responsible for the precept. Still more significant than the foregoing question, is the query proposed to me by Prof. Vlaming, or rather his explicit contention, that deliberate abortion is before the Dutch law, under all circumstances, a misdemeanor.

Prof. Vlaming had no trouble to defeat me with the contention referred to above. It is an easy matter to prove by my own words, quoted from my published works, my admission that the letter of our Penal Code makes no exemption for medical abortion.

Yet my former writings leave no doubt that I have always held, and that I justly believe, that the penal lawmaker aimed to exempt from prosecution the physician acting in accordance with the rules

of his science. It is a mistake, in my opinion, that this aim has not been explicitly stated. Accordingly, it was a great joy to me that, upon proposing to remove from the penal law the inferred limitation (which makes the whole article illusory) that only abortion of the dead fetus is permissible, Minister Cort van der Linden desired it defined at the same time that abortion procured upon proper medical grounds shall not be punishable. The fact, however, that such an erudite man as Prof. Vlaming writes down the aforesaid contention sufficiently shows that according to the letter of the law at present a physician, acting up to his duty, his conscience, and the canons of his art, runs the risk of being punished.

If the Christian interpretation is accepted, then the Penal Law is wrong in not consistently going further.

The penal legislator was unwilling to consistently go further, and thence follows, in my opinion, that the Christian interpretation can not be used as the basis of the Dutch Penal Code.

I don't wonder that Prof. Vlaming goes further. Of him I gladly say what I said about the Catholic Church decrees cited by him, that he has the courage of his convictions.

To prevent him, however, from showing by a display of his legal talent that I contradict myself, I emphatically declare that I am not at all convinced of the truth of his opinion. On the contrary, in the foregoing pages I strove to demonstrate that the Catholic Church and Prof. Vlaming have the courage of an *unjust* conviction.

Now, at last, we come to the medical aspect of the question.

Whence the Holy Office derives its knowledge of this side of the question I am unaware, but I do know that Stöhr's "*Pastoral-Medizin,*"* which is generally used at present by the Catholic clergy of Holland, is a very poor source of knowledge. In it we read under the head of *Abortion procured in cases of uncontrollable vomiting,* the following: "Modern experience teaches that this procedure brings about the desired result only in one-half of the cases."† This is decidedly untrue. By adding up all the cases in uncritical fashion, one may possibly reach such a figure. But all "*accoucheurs*" know that abortion no longer helps when exhaustion has gone too far. Should one perform the operation only then, the bad result is not due to abortion, but to the untimely season at which it was produced. If abortion is caused in time, then the woman will *almost certainly* recover. Needless to say that it is extremely difficult to determine the right time.

That is why in my book on Obstetrics I recommended to hold a timely consultation with another physician.

The question whether the procuring of abortion is morally justifiable or not, arises not only when there is pernicious vomiting but also in other cases. Such is first the anomaly styled acute hydramnios, that is the presence of an abnormal amount of "the

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* *Handbuch der Pastoral-Medizin von Aug. Stöhr, 4te Auflage bearbeitet von Dr. Kannamüller, Freiburg,* 1900, p. 438.

† See G. C. Nijhoff, *Over Hyperemesis Gravidarum, Geneesk. Bladen,* 1901, No. II.

waters." This trouble in a moderate degree is rather common, and amounts to nothing. When it develops slowly, it may reach a high degree without endangering the woman's life, and then one may at least await the period of viability, should this not as yet have been reached.

Rapidly developing hydramnios occurs generally in the early months of pregnancy. This is often a source of great danger to the woman's life, and here we have the same case as with excessive vomiting: when the woman dies, the fetus is lost; but when abortion is procured, only the fetus, which would be lost in any case, dies, but the mother is surely saved. I will not bring forward in defense of the medical rule the fact that in case of hydramnios the child is often born deformed, immature, and unviable. My medical ethics, and not mine only, but those of every physician who does not hold himself bound by the decisions of the Holy Office are embodied in the following principle of my book on Obstetrics: "During the early months when the woman's life is really at stake, the life of the fetus is not to be reckoned with, as, in case of the mother's death, it, too, is invariably lost."

Needless to say that the Holy Office's decree holds good also for this case, and that, judged by it, my advice, which I consider in harmony with common sense, is altogether wrong. It will not do to reason as follows: "The woman's dangerous condition springs from the excessive quantity of amniotic fluid. By tapping that water, I save the woman's life. That this evacuation may be a

means of causing abortion is an adventitious result which I did not intend."

Still we come across such reasoning, although not unchallenged, for instance, on occasion of the second condition with which we have to deal, *viz.*, the retro-displacement of the womb. In most cases we succeed (by drawing the water off) in bringing the womb back to its normal position, and when the doctor is called betimes, he can thus save both mother and child. Altogether false is Stöhr's* contention: "*Experience teaches* that in these circumstances the fetus never comes to maturity, but abortion is bound to follow *in an early period,* also *without the physician's intervention.*" To prove the falsity of this, I shall not give detailed statistics.† They who lack opportunity, or desire to examine the matter for themselves, and will not take my authority as "*accoucheur,*" may obtain the same information from any other skilled obstetrician.

Stöhr makes use of his wrong contention to attack the following rules of Capelmann (of which the italics are mine): "*If all these means prove vain, if the womb resists all efforts to restore it to its place; if the emptying of the rectum, and particularly of the bladder, has been for some time absolutely impossible, if, moreover, there are symptoms of inflammation of the bladder and of the*

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* It is Kannamüller's view rather than Stöhr's. The latter shared Capelmann's view.

† See Treub: Oorzaken van den dood bij incarceratio uteri gravidi retrofleci; also Ten Berge.

bowel, then I consider it lawful to resort to the last means, the reducing of the womb to its normal size.

It seems to me that in this case all the requirements of right and morality are complied with. The mother is in *direct* and *immediate danger* of losing her life, and with her, or even before her, the fetus will die. All other means to save the mother's life have been tried, and no other salvation is left but to lessen the womb by drawing off "the waters." The direct and immediate effect of this diminution of the womb will be to make the replacing of the womb possible, and to rescue the mother from proximate danger of death, without necessarily first causing abortion. The good effect, *i. e.*, the mother's recovery does *not* eventually follow *from abortion, but* it follows immediately *from the diminution of the womb.* Abortion, of course, follows from this tapping of "the waters," "although it was not intended."

Most frightful quibble is the only qualification we can give to the last part of Capelmann's argument where he owns that though he pierces the fetus-membrane, yet he does not intend to cause abortion.

Well grounded then is Stöhr-Kannamüller's objection: "Direct abortion is not only that which is directly intended, but also that which is directly brought about." But Kannamüller might have spared us the foregoing contention. It is plain that, according to the decisions of the Holy Office, the procurement of abortion is forbidden also in that case.

But according to Stöhr (Kannamüller) this is not so serious. For he says: "I should under the given circumstances by all means perform the cesarian section which nowadays is made less dangerous through antiseptic measures, thus replacing the womb (relieving the pressure) and probably saving both, mother and child."

The writer may now appeal to an authority in obstetrics, albeit many others could be brought forward against him. In order to put myself as much as possible on the standpoint of my opponents, I will betimes range myself with that authority. Kleinwächter* holds, since causing abortion by means of the probe, and more still by puncturing of the membrane, is a very dangerous measure, it is preferable to perform the cesarian section, and then to replace the womb from above. This sensible proposition made by Schwable, fourteen years ago, was first successfully carried out by Murdock Cameron. A like success in this operation attended Da Costa, Fry, Mann, McLean, Horer, Pinard, Kerr, and McLead.

I repeat, I'll not quarrel with Kleinwächter's utterance. At most, it appears from that citation that laparotomy has, in different cases, been successfully performed. Let us suppose that it was necessary in all those cases. Listen also to what Kleinwächter says right after the above: "If, however, consecutive inflammations have set in so that the expanded bladder is attached to the peritoneum, then surgical operations are out of the question."

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* *Die Künstliche Unterbrechung der Schwangerschaft, 3te Auflage,* 1902, p. 75.

Besides this possibility set forth by Kleinwächter, there are other cases where laparotomy would not only be much more dangerous than the puncturing of the amniotic sac, but almost directly fatal, and where consequently no intelligent physician would want to undertake the operation. But this matters not; Kleinwächter himself owns that there are cases where the cesarian section is impossible, and then there is the alternative either to make an effort to save the woman through abortion or to let her and the fetus die.

In a hitherto unique case treated by Olshausen, the restoring of the displaced uterus was made impossible by a contraction of the entrance of the pelvis. He cured the woman by removing the pregnant womb.

This saving treatment is also unlawful according to the decision of the Holy Office. Stöhr, however, says, rightly from his standpoint: "Our duties toward the budding life most strictly forbid direct killing, and especially the physiological and mechanical killing. By physiological killing, I understand the bringing about of abortion, as the fetus is thereby robbed of the requisites of life."

Such was altogether the case in the operation performed by Olshausen, as removing the pregnant womb from the body is evidently depriving the fetus of the necessaries to life. Also in this case the Holy Office would say: Rather let the mother and the fetus die, than save her by the "physiological killing" of the fetus.

The same holds good with regard to another diseased condition, *viz.*, cancer of the womb. Recent experience teaches that the

sooner the portion of the body attacked by cancer is removed, the greater is the chance of a radical cure of the trouble. Hence, with all surgeons the possibility of a radical operation on a cancerous tumor means the possibility to remove the growth. Experience has taught likewise that in cancer operations the removal of the whole infected organ (wherever possible) as a rule gives better results than the excisions of the tumor only. Thus, in case of a cancer of the breast, for instance, no surgeon will think of anything else than removing the whole pectoral muscle and lymphatic glands, where the seat of the disease lies. Exactly in the same manner do all gynecologists cut away the whole womb, in case of cancer of the neck of the uterus. What is to be done when pregnancy occurs in a cancer-infected womb? Also about this not unfrequent case there exists a common opinion with present-day gynecologists.

If one discovers the cancer while it is still removable (radically), one should operate as soon as possible, regardless of the stage of pregnancy. If, on the contrary, it is no longer possible radically to remove the cancer, one should not attempt anything which, while unavailing to save the mother, would endanger the life of the child.

Generally speaking, the first part of this rule clashes again with the decree of the Holy Office. When the cancerous womb is removed during the first seven months of pregnancy, the fetus is thereby deliberately sacrificed. There we have, just as in fore-

going quoted instance of Olshausen, a physiological killing of the fetus, such as it is not customary to put under the head of abortion, but which ethically and physiologically in nowise differs from it.

Whether a decision of the Holy Office exist about this, I know not; but logic requires that it should forbid to the mother this saving operation. If I add that such cases are not rare, the severity of that decree becomes all the plainer. True, in some cases of this kind the child's life will be saved at the cost of the mother's life. Not often, however, as cancer frequently causes spontaneous abortion. Vulstéke, I confess, contradicts my argument. He says: "Even if the only and usual means of saving the mother in this case (of dangerous affection of the womb in normal pregnancy) were to remove the womb, one would be allowed to do so, despite the presence of the unviable child; for then also we have an act indifferent in itself, *i. e.*, the removal of a diseased organ of the mother, which has two effects alike immediate in the order of causation—the mother's cure and the child's death. But the latter is not a means to save the mother."

It is a pleasure to observe that nature gets with this writer the upper hand of the doctrine; but he swerves widely both from logic and from the Holy Office. Two pages further back in his book, under the head of doing away with the unviable fetus in extra-uterine conception, he says: "Ordinarily the case will be this. It is physiologically impossible for that fetus to live in another place than where it is now unfortunately lodged; to withdraw it, is to

cause the death of an unviable child—it is a directly murderous act."

Is this reasoning not quite applicable to the removal of the pregnant cancerous womb? The killing is directly intended in one case as well as in the other, in order to save the mother's life, and the sentence, "Here the child's death is not a means to save the mother," I can not characterize any other way than a quibble.

When we look at the matter as it really stands, then it can not be said that the fetus is killed accidentally. No; the sacrificing of the fetal life is withal an integral part of the deed. Here, then, in the system of my opponents, Prof. Vlaming's words are quite to the point: "The ulterior object can not take away the intrinsic aim of an act." If they refuse to grant me this, then by a like sophism as Vulsteke uses, I can prove that it is lawful to remove the womb in case of pernicious vomiting, while causing abortion remains forbidden.

Such absurdities will, I trust, be beneath my opponents' notice, and, therefore, they will admit that I am right and that Vulsteke is wrong.

The same thing as for the cancer of the womb holds good in another case to be mentioned, *viz.*, pregnancy in a womb in which are fibromyomata. This is a very common case. Fortunately, it does not necessarily cause any trouble or danger in pregnancy. Yet there are not a few cases where during pregnancy, and because of it, those tumors threaten the woman's life. Then operative

gynecology teaches that one can remove the tumor while leaving the pregnant womb. Every gynecologist of some experience has operated on such cases, and has eventually seen the child born at maturity. But every gynecologist comes also, now and then, across cases where, owing to prevailing conditions, this conservative operation is no longer possible, and where the only means of salvation consists in removing the entire pregnant womb. At times the physician knows this beforehand; at other times this necessity will become obvious not before the beginning of the operation, and not until the abdominal cavity has been opened; sometimes again only after an incision has been made in the womb.

Here also, logically speaking, the Holy Office should come forward with its inflexible prohibition. Should the surgeon then detect the necessity of removing the pregnant womb in the course of the operation, he would have to stop short of it. Nor does it matter if it should become necessary to remove the womb to stanch the bleeding. According to the decree of the Holy Office, the doctor must let the woman bleed to death, for under no circumstances is any measure allowed which has for necessary consequence the ejection of the not viable fetus.* Thus we have already a long list of cases where the decrees of the Holy Office must conflict with the physician's efforts to save, at least, one of the lives at stake, and where *two* lives must be sacrificed to the obstinate main-

* Stöhr, l. c., p. 438.

Behandeling van eenen gerupteerden Vruchtzak. Ned. Tijdschrift voor Geneesk., 1901, p. 257.

tenance and literal interpretation of the precept, "Thou shalt not kill."

Finally, there is still another condition with which I must deal, *viz.*, extra-uterine pregnancy.

In this peculiar form of pregnancy the fetus has extremely little chance of reaching maturity. In most cases pregnancy is then stopped by the bursting of the fetus sac, or through a similar cause. Extra-uterine pregnancy is thus stopped generally in the beginning, sometimes only in the later stages. Coupled with this irregular pregnancy is a more or less serious bleeding of the abdominal cavity, which brings the woman into serious danger of death. From Dutch statistics it appears that in consequence of this bleeding in 331 cases, not less than 42 women succumbed. This means that extra-uterine pregnancy is fatal in 12.5 per cent. of all cases.

Hence Werth's view is generally adopted, *i. e.*, extra-uterine pregnancy must be considered a malignant tumor, necessarily to be removed at once. Until quite recently I was one of the few who disagreed with Werth, especially because I accidentally succeeded twice in ushering into the world a living child at or near the term of extra-uterine pregnancy. One of these children is now a well developed boy of fourteen. I believed that in the later stages of pregnancy the life of the child should be reckoned with. In the face of above figures I can not adhere to my former opinion, because it is shown, furthermore, in these statistics, that through the puncturing of the fetus sac occurring after the fourth month of

pregnancy, the mortality runs up to fifty per cent. Therefore, I coincide with the view that "each case of diagnosed unpunctured extra-uterine pregnancy must be operated on as soon as possible," that consequently the fetus' life can not be considered. Here, then, we have a more serious conflict with the decrees of the Holy Office than the one which caused all this writing. For in that case both mother and child were doomed unless the operation was performed; here, although the woman runs a twelve and five-tenths per cent. to a fifty per cent. danger to her life, there are chances of recovery, and it is even possible that the fetus may live. Precisely, therefore, the Holy Office must adhere to its prohibition, and thus forbid that which all physicians consider necessary; it must require the woman to refuse all help, and to calmly suffer the probable fate of bleeding to death.

I had reached this conclusion as a logical result of the Holy Office's teaching. That my conjecture was correct I found out afterward, borne out by facts stated in the above quoted paper of Vulsteke. He cites a decision of the Holy Office, dated May 4, 1898, which determines that in case of extra-uterine pregnancy, doctors may, when compelled by necessity, perform laparotomy to extract from the mother's side the extra-uterine fetus, provided proper and conscientious care be taken of the lives of both mother and child as much as lies in their power.*

** Necessitate cogente licitam esse laparotomiam ad extrahendos e sinu matris ectopicos conceptus, dummodo et foetus et matris vitae, quantum fieri potest, serio et opportune provideatur.*

(That means that when the fetus is not viable, the cesarian section necessary to remove the extra-uterine fetus sac is not allowed.—Note, by the Editor of the English translation.) That the operation is lawful when the fetus has become viable is self-evident, and required no decision of the Holy Office.

Thus the fact abides that according to the consistent mind of the Holy Office, it is forbidden to perform laparotomy just during that phase of extra-uterine pregnancy, when most women's lives could be saved, *viz.*, during the first five months.

It is quite true that one will often remain in doubt whether one is dealing with an incipient extra-uterine pregnancy, complicated or not by a tumor. But what according to medical science justifies a quick operation is that one can not be sure of the existence of extra-uterine pregnancy. Could this be ascertained there would be no need of such hasty operating. The matter is not, then, exactly as Vulsteke states it: "One wants to cut out a tumor, and one finds out, but too late, that it is a fetus."

After the operation one may as well rejoice if such is found to be the case, for, if the fetus is alive, one can baptize it, and the mother is spared a great danger, whereas otherwise the fetus would probably have died without baptism. The fact is, however, that a physician can not exclude the suspicion of extra-uterine pregnancy, and, for the mother's sake, will even consider it as probably existing. And, therefore, in operating he intends to remove the suspected extra-uterine fetus-sac, with the not yet viable progeny, in order

to rescue the mother from a serious danger. But, then, the Holy Office steps in with its strong arm, forbidding the undertaking of any operation with such intention.

The list of cases in which the Holy Office's views set at naught all human sentiment, all human reason, and all medical science, could easily be enlarged. But I will stop here. I believe that Dr. van Oppenraay is greatly mistaken in his expectation that the *children spared* through this severe interpretation will far exceed in number the few *sacrificed mothers.* If, through the decision, *malicious* abortion were hindered, he would be right. But one must be very unsophisticated to expect from it a result to which the Holy Office itself does not look forward, since it speaks only of abortion procured on medical grounds.

That the Holy Office forbids malignant abortion is self-evident, but that is not under discussion. The consequences of this severe decree can only be the following: 1. That the patients aware of these facts will prefer non-Catholic physicians; this would be sad, but not unlikely. 2. That Catholic doctors will not heed the prescriptions of the Holy Office, a very sad consequence in the estimation of Drs. van Oppenraay and Vlaming, but, in my judgment, a reason for congratulation and rejoicing. Or, finally, 3. That many women will be sacrificed, and thereby hardly ever a child's life saved. In my judgment, this is the saddest consequence of them all, and to forestall it, I have set out to attack the Holy Office's decree.

The Holy Office, over-anxiously clinging to the commandment, "Thou shalt not kill," has seen fit to promulgate an unwise decree, which has no other result than the sacrificing women's lives which could have been saved. That decree ought to be amended.

EDITOR'S NOTE.—The unlawfulness of abortion does not date from 1895, but from the time of man's creation. A few theologians, no matter how eminent their learning and virtue, do not constitute, nor officially represent, the Church. This prudent and watchful Mother explicitly defines God's will (embodied in Divine revelation), only as circumstances call for such clear-cut statements.

NARROWNESS OR WHOLESOME CONSISTENCY.

BY DR. TH. M. VLAMING.*

> The right over the child's life and death belongs neither to the father, nor to the mother, nor to the physician.—Dr. A. Pinard.†

While bowing most respectfully to the learned writer of the foregoing paper, I take pleasure in resuming the debate. The more so because, after Prof. Treub's arguments and reflections, I need not rely any further on guessing, but his process of thinking lies broadly and plainly before me, and I am thus enabled to clear up, and defend more effectively than hitherto, this mooted point of ethics.

Honestly, I must confess, Prof. Treub has laid a heavy task upon me. Especially the medical part of his argument requires a somewhat extended answer.

On the other hand, Prof. Treub relieves us considerably by throwing out the law question, since he declares his unconcern regarding the juridical side of the matter. This is indeed a surprising statement, in as far as Prof. Treub published his protest in a law

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* Under cooperation of Rev. R. van Oppenraay, S.J.

† Dr. A. Pinard, Professor of Obstetrics at Paris, in *Du soi-disant Foeticide Thérapeutique, Annales de Gynécologie,* January, 1900.

magazine. Moreover, because he submitted it in the shape of a proposed statute of law. We learn, however, that he did so because he saw no other way to call forth the sentiment of the Dutch people, or of its representatives, but, even after vouchsafing this information, it remains somewhat strange that one should appeal to the Chambers for something about which one is not concerned, since the Chambers are not a tribunal for the deciding in disputes on ethics or medicine, but a legislative assembly.

At all events, I cheerfully note his declaration, and I hope the Chambers will do likewise, as we shall then be spared an extraordinary law, which its sponsor claims he did not propose in earnest.

My part* of this answer to Prof. Treub can conveniently be reduced to three points, which I shall at once indicate here, *viz.:*

1. To give attention to Prof. Treub's chief polemical observations.

2. To point out the exact sense of the decision of the Holy Office objected to by Prof. Treub, and to define the influence it must exert on medical practice.

3. To maintain and vindicate this decision in its true meaning, claiming it to be the logical and wholesome result of the principles held by us in common.

Thus I hope to demonstrate once more the unjust and illogical position taken in this matter by Prof. Treub.

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* At Dr. van Oppenraay's request I will insert his replies to Prof. Treub's argument in suitable places here and there in my own article.

I. POLEMICAL OBSERVATIONS.

First of all, my esteemed opponent is displeased because I put him, as he claims, in an undeservedly bad light by quoting his phrase *Moloch-worship*. However much we appreciate that it was not Prof. Treub's intention to charge our religion thus, it, nevertheless, amounts to the same, because it is part of our religion to accept in their fullest sense the decisions of the Holy Office.

Pius IX. wrote to the Archbishop of Munich-Freising, on the occasion of the recent *Assembly of German Theologians:* "For well-meaning Catholics it is not sufficient to accept and respect the dogmas of the Church, but it is also necessary to submit to the decrees of the Papal Congregations in matters of doctrine, as also to those points of doctrine which, in virtue of universal and constant agreement among Catholics, have been held as theological truths, with such obedience that opinions running counter to them, while not deserving the name heretical, are, nevertheless, deserving of censure."* If I did not fear Prof. Treub's charge against me of *a certain cleverness,* I should mention here again that he himself saw at one time in our Moloch-worship a consequence of the Christian understanding of morality—a consequence which he now opines ought to be rejected. Besides, I note, Prof. Treub insists

* Latin text in Denzinger's *Enchiridion Symbolorum et Definitionum,* No. 1537. Cfr. Granderath, S.J., "*Die Machtvollkommenheit der Röm. Congregationen bei Lehrdecreten, in Zeitschrift für Kath. Theol., Innsbruck,*" 1895, p. 630 and following.

on restricting the term "conglomeration of cells" to the fetus in the first stages of pregnancy. I sincerely regret that I misconstrued the writer's meaning by overlooking this in a first reading. But it is unconceivable to me how this mistake of mine can be taken as an accusation by Prof. Treub, who, whenever he deems it necessary, gives no more right to a fetus of the later months than to that of the earlier ones, and does not even stop at the (to him) revolting craniotomy, which, in Pinard's judgment, is condemned "without appeal."*

I hold it a great advantage that Prof. Treub cares not about the stupid unjust-aggressor argument. How could I know this, as I sought in vain for some argument in his first article? I am really glad that, in my guessing, I guessed wrongly there. But it seems strange to me that the fetus' innocence in case of pernicious vomiting is not placed above all doubt by Prof. Treub.

Again, he thinks that I wronged him by calling his definition of "medical abortion" a broad one. It appears I should have thus qualified the definition in connection with its general application. If I understand it rightly, Prof. Treub, by illustrating the application, means to throw light upon his definition, and to show in particular what are good grounds for stopping pregnancy of which the definition speaks only in general. But, then, I am not really wronging him by styling the definition a broad one, broad, namely, in its ap-

* *De l'Avortement médicalement provoqué. Annales de Gynécologie,* January, 1899.

plications authorized by the definer himself. And this application had to appear very broad to me, acquainted, as I am, with Prof. Treub's *Leerboek der Verloskunde* (1897), (Text-book on Obstetrics), in which he teaches that the pregnant woman be left peacefully to choose between abortion and cesarian section; I was not, however, aware of his article published a few years later in *Aertzliche Rundschau* (1900), in which he no longer leaves this choice to the pregnant woman.

And whatever store I set by his exhortations to prudence in diagnosing, I could not help seeing in it a warning that once medical abortion shall be considered lawful, we shall run the risk of unnecessarily resorting to it. Therefore, I was justified in pointing out the threat to the fetus' right to live, contained in the permissibility of medical abortion.

I perused Prof. Treub's proud and strong protest against accepting as infallible the personal sentiment of the Holy Office and his refusal to recognize such an authority. Naturally, I can not but regret that Prof. Treub can not conform his judgment to that of the Holy Office; I am sure it would not tend to his dishonor if, in questions of morality, he should respect so competent a tribunal; but there is no question here of forcing that judgment upon him. We demand, however, the inalienable right of liberty regarding our convictions. And as the professor impugned this liberty in his article, he has put us upon the defensive.

Now a few polemical observations on my part.

When Prof. Treub comments on the juridical side of the question, he ascribes to me the desire to make the procuring of abortion, under all circumstances, punishable by law. Hence some might think that it is less Prof. Treub than myself who puts himself forward as a lawmaker.

This is a misunderstanding. Although the sentences I used, taken by themselves, would warrant Prof. Treub in ascribing such an intention to me, it appears sufficiently from the previous and following remarks that I was not an assailant but a defender, and that I merely wanted to show that neither law nor law-interpretation could give Prof. Treub the right to accuse our priests of placing themselves above the law by forbidding abortion. For this reason I endeavored to bring out the fact that even medical abortion can but barely avoid to clash with our penal law, because it is very hard to sustain an unwritten definition such as appealed to by jurists in its behalf. From this explanation it is evident that neither my contention nor its application were quite grasped by Prof. Treub. Another remark on the professor's opinion and on his appreciation of the manner of my defense: I do not see why there can be no question of a debate between us, and how we should be placed in two different standpoints. For, although it seems left to us Catholics exclusively to take up the cudgels for the inviolability both of God's dominion over life and death, and of the fetus' right to live; and although this twofold right is strongly confirmed by Divine revelation, and, for all true Catholics,

also by the pronouncements of Church authority the question we are dealing with is not a specially Christian, and much less a specifically Roman question. For the fetus' right to live, now attacked, is a natural right, a right whose inviolability is based by Dr. van Oppenraay and myself on the principles of natural and commonly accepted morality,* principles which are also, I am sure, accepted by Prof. Treub, and which, consequently, do indeed give us a common ground.

And since the weapons with which we are fighting consist for both of the same dialectics, the crossing of swords is made quite possible. Hence I beg leave to observe that the quaint illustration used by Prof. Treub is not a suitable one.

Should a combat, nevertheless, appear impossible, it can be only because the professor refuses to his opponents the right to turn against him the sword of logic, the weapon which he himself wields to the best of his ability. It seems a fact, that whenever his opponents strive to draw logical conclusions from principles, he rejects them as philosophical "speculations," and if they try to illustrate and corroborate their conclusions by analogy with other cases,

* These principles are: 1. One may not kill the innocent. 2. One must respect also the life in the womb. 3. The end does not justify the means. Cfr. Dr. van Oppenraay, above. Concerning No. 2, I believe to have certain knowledge that Prof. Treub really is what Dr. van Oppenraay calls him, namely, the "fierce enemy of unscrupulous abortion." Even that case of the two persons drowning is not so arbitrary as some might think. As late as 1884 Lord Coleridge, Chief Justice of England, sentenced to punishment two survivors of a shipwreck, who, in order to save themselves, had attacked the life of a comrade, whose condition had been altogether hopeless.

whether of real occurrence or of arbitrary though not impossible supposition, he tells us that arbitrary statements of cases seem to him of little use, either to defend or to impugn a principle, and, finally, where, in order to apply the commandment "Thou shalt not kill" with due circumspection, trying to prevent the child from being thrown overboard, we make sharp distinctions between cases seemingly alike, but not so in reality, there Prof. Treub styles our argument as quibble.

Nevertheless, I venture again upon the arena, and I begin by inquiring about the

II. MEANING AND SCOPE OF THE DECREE.

In 1895 the Holy Office condemned the procurement of abortion, *i. e.*, the ejection of the living fetus at a time when it can not live outside the womb. This condemnation applied to all cases; also such where medical science sees in it the only means to save the pregnant mother who is (with her fetus) in danger of death.

The ground for this condemnation appears from comparison with a like decision given in 1889: The Holy Office sees in it an *operatio directe occisiva foetus* (a direct killing of the unborn child), thus a direct transgression of the natural universal moral law, "Thou shalt not kill."* By using the word *direct*, the Holy Office lets us

* We know the natural moral law from our sound reason (*recta ratio*). Refer to my citation of Lactantius-Cicero, above. The ten commandments are, it is true, the setting forth and the positive promulgation of the chief principles of the natural moral law, but they neither constitute that law nor do they embody the whole of it. This is my answer to Prof. Treub's query as to the extent of natural law.

infer that there may be operations which, albeit likewise deadly for the fetus, cause death only indirectly, and are, therefore, not absolutely forbidden.

What is meant by killing some one directly, and what by killing him indirectly?

I kill somebody directly by doing something which necessarily has either his death, or, at least, his impossibility to live, for *immediate* consequence.

I kill a person indirectly by doing something which has something quite different for *immediate* consequence, although in the long run his death, or his impossibility to live, must needs follow *from my deed;* in other words, I kill him indirectly by doing something of which death is only a remote consequence.

Thus I kill a *born* man directly by giving him an outright deadly blow, or by doing something else which brings him immediately into the absolute impossibility of living; for instance, by poisoning him, by fatally wounding him, or by depriving him of the air necessary for existence (by drowning or asphyxiating).

I kill the *unborn* human being directly, firstly, by every operation which kills him outright, such as craniotomy and the like; but then also by withdrawing him from the medium which by nature*

*I say by nature, for under No. 3 I shall speak of the adventitious circumstances that in certain diseases make it really impossible for the fetus to live, *i. e.*, that is of the invalidity of its right to live, upon which Prof. Treub builds his strongest attacks.

is for him the only possible and preliminary* means to keep alive, *viz.*, by withdrawing him from the mother's womb, more definitely from the fetus-sac and the amniotic fluid; in other words, I kill the unborn fetus directly by bringing it outside the womb, whether or not by preliminary piercing of the membrane, then also by removing it from the mother's side before it is viable, in case of extra-uterine pregnancy.

In the cases mentioned above by Prof. Treub, the utterances of the Holy Office are, indeed, applicable, where there is in them really an *operatio directe occisiva foetus, i. e.*, an operation which has as direct consequence the fetus' death, or its impossibility to live. As regards the direct-killing character of the puncturing of the amnio, I am happy to say that I, and Stöhr as well, perfectly agree with Prof. Treub, and I hold the latter's castigation meted out to Capelmann as well deserved indeed, and in my turn I am glad to observe that, to use the language of Prof. Treub, theological ethics here join hands with medical ethics. Among the operations spoken of by Prof. Treub, there are some which are only *indirectly* fatal, to which accordingly the decisions of the Holy Office do not extend. I mean all those operations which are performed not directly on the fetus, but on the mother's diseased organs, with a view of saving her life by removing such affected organs. Such operations per-

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*I say preliminary for, just as with the born man, one must hold the idea of direct killing independent from the greater or smaller chances of the duration and further development of the life which is assailed.

formed also on the *pregnant* womb are, although through them the fetus' life is lost, allowed, according to the principles of a reasonable morality, as they are not a direct killing of the fetus. This utterance is a conclusion of the rule of ethics that man is not in every case responsible for the unavoidable fatal consequences of a deed which, taken by itself, is moral and good, provided that, on the one hand, the good effect that may be expected from the deed at least counterbalances the evil effect unavoidably entailed in the result, and provided that, on the other hand, one neither seeks nor immediately intends this evil effect. Under such conditions one may simply allow the unavoidable fatal consequence to happen by performing the lawful deed and intending its good effect. Were this not permitted, and were one obliged to abstain from a worthy deed, that has indirectly a harmful effect, then many of the most important works would have to be left undone, as, *v. g.*, exploring expeditions, manufacturing under unhealthy conditions, mining, going to war for a good cause, etc.; then no one should even venture to enter upon the practice of medicine, because in the practice of it every physician is liable to make a mistake that may prove fatal to some patient.

To prevent any one from rejecting as evasive my distinction between direct (ever unlawful) and indirect (lawful for sufficient reasons) killing, I shall give some examples which bear directly upon our subject, and in which such distinctions will be allowed by every reasonable man.

Suppose that in a lawful war the party that is in the right is compelled, by strategic necessity to blow up a certain fort. None will condemn in general the resorting to this strategic measure, albeit, he knows that there are in that fort defenseless women and children, who are thereby indirectly sacrificed. Yet everybody will rightly condemn the soldier who abuses the opportunities of war to murder wantonly the enemy's defenseless women and children. A man like Krueger must have foreseen the mortality of children in the Boer camps; and yet who will blame him for having, in spite of that, declared war when he thought it necessary to preserve the liberty of his people? One could multiply examples in which exactly the same principle is applicable, as also in the case in which a mother, for instance, may take a medicine against a dangerous illness, or submit to a necessary surgical operation, even of the womb, although her fetus indirectly dies through it, provided the medicine, or the operation, does not directly assail the natural requisites for the fetus' life, but only the diseased organ, or organism, of the mother. From that distinction follows that I must give right to Vulsteke over Prof. Treub, that a pregnant woman's cancerous womb may be removed to save her threatened life, as the fetus is thereby killed only indirectly. The same holds good in regard to the case treated by Olshausen, *i. e.*, retro-position of the womb and impossibility of replacing it, as also of the womb with fibromyomata. The conclusion of Prof. Treub that he might just as well remove the womb, in a case of uncontrollable vomiting, thereby causing abortion, is

wrong. Why? Because in this case the womb itself does not cause the danger of death, and therapeutics do not, in this case, prescribe the removal of that organ. The removal of that not dangerously diseased, perhaps even perfectly healthy, organ, for the removing of which there is no cause in the organ itself, would amount not only to indirect but to the direct murdering of the fetus.

The fact is, if one will deal with these matters according to principle, one must sharply distinguish case from case.

Dr. Berend's essay has thrown light on the incorrectness of Vulsteke's view regarding the case of a tumor exterior to the womb, the true character of which tumor (as to whether extra-uterine pregnancy or not) can not be diagnosed with certainty. Here, I think, one must hold that, as long as the tumor is not in itself dangerous to the woman's life, by its too quick growth, or its untoward seat (with a view to pregnancy), one may not perform the operation. Otherwise the surgical intervention would serve, not definitely to cut out a simple tumor, but to remove a fetus possibly lodged therein; consequently, the operation would be intended as directly murderous to the offspring.

From the foregoing distinction it is clear that the alarm given by Prof. Treub, as though many women were being sacrificed to the Holy Office's decision, is, to a great extent, a false alarm. I sincerely hope that, in order to quiet some minds unduly excited through the rumor of our controversy, some physician will draw up statistics of the cases in which abortion directly procured, according to the

rules of medical science, has really saved the lives of women. From my own casual observations I have acquired the conviction that both our Catholic women, and our Catholic doctors, will extremely seldom be placed before the dangerous choice between their hearts and their consciences. To substantiate my assertion, I refer to Dr. Nijhoff's article in this year's *Geneeskundige Bladen* (Medical Journal), which Prof. Treub has quoted. We read there, precisely concerning the sickness so much in evidence throughout this discussion, *viz.*, pernicious vomiting, how obstetricians, such as Schauta, Frank, and Naquet, congratulated themselves on never having been compelled to procure abortion on account of uncontrollable vomiting. And another professor knows of but two cases in his long practice where abortion had a favorable effect* in this trouble.

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* In regard to the more or less favorable effect of deliberate abortion in cases of excessive vomiting, Prof. Treub vehemently gainsays Stöhr's statement that the result of this operation is favorable in not more than one-half of all cases. On this score the professor stigmatizes Stöhr's book as a very poor source of information. I must say, without disparaging Treub's authority, that, even were timely abortion a well-nigh certain cure for pernicious vomiting, he seems unduly severe toward Stöhr, as far as his sentence rests upon that argument. True, Prof. Nijhoff writes that the number of such patients cured through deliberate abortion is very great. Now, the difference between one-half of all cases, and a very large number, is not so striking, the more so, because the same doctor assures us such reports are not made very critically, since favorable cases are eagerly published, whereas the others are seldom mentioned.

III. THE DECREE OF THE HOLY OFFICE MAINTAINED AND DEFENDED.

Prof. Treub remarks: "Paraphrasing the commandment 'Thou shalt not kill' and the maxim 'One can not do evil that good may come of it' in nowise proves to my satisfaction the reasonableness of the Holy Office's decree. Yet such is the only weapon used by Drs. Vlaming and von Oppenraay to drive me from the stand I have taken."

In speaking thus our honorable adversary overlooks two things: 1. That also in a fight with the pen quality counts more than quantity. 2. That our common sense tells us that where a principle appears self-evident from reason, the logical consequences of that principle (call them paraphrases or whatever you please) must also be admitted to be self-evident. To escape this necessity, one must show either that a certain conclusion has been drawn incorrectly, or that a specific case evidently lies outside the reasonable application of the principle. The latter is demonstrated by those who claim that killing in self-defense, in a just war, and, in case of capital punishment, are manifest exceptions to the commandment "Thou shalt not kill." These limitations are based on maxims of the same natural law, dictated by the same sound reason which proclaims the principle "Thou shalt not kill." Or, rather, the law of nature, Holy Writ, and Canon law combine in teaching that this prohibition refers only to the killing of an innocent man and per-

petrated on private authority. Therefore, Prof. Treub is wrong in charging us with inconsistency for excepting from that precept the case of lawful self-defense, and of capital punishment inflicted by lawful public authority.

But what right have Prof. Treub and his disciples to widen the limitations of this principle? Is it necessary to prove that the unborn man is *innocent* and *not an unjust aggressor?* And is not the operation we are discussing a direct killing of the fetus? To what sound principle can the professor appeal to show that here the propriety of killing an innocent man, instead of being against reason, is self-evident by reason? Can he bring forward a counter-principle, on account of which the law "Thou shalt not kill" should be limited according to his wish?

Like many others, my honored opponent has really attempted to do so. But the reasons which he alleged as based on principle, can not bear careful examination. Not one of them is sound; none can serve as a *constant standard* of morality. Nobody, not even the very men who bring them forward, would dream of applying them, except to the single case for which they are put forth. They would never think of using those arguments to justify, under similar circumstances, the killing of an extra-uterine life, of a child on the mother's lap. This alone manifests the intrinsic weakness of their position; it is clear that theirs are but arguments for expediency, deemed good enough to assail the life of the fetus that is still puny and out of the mother's sight, but not good enough to attack the

life of the little one whose twinkling eyes have kindled a light upon the mother's face. The truth of this fact will appear from my further observation on the professor's arguments.

"In my judgment," quoth he, "the life of a woman, the mistress of the house, and still more the mother of a family, is of greater value than the life of a three months' fetus."

Were it a matter of mere sentiment, I would fain coincide with him. If, in the course of nature, there is a chance of saving but one of the two lives, I should wish with all my heart that the chance favor the mother. But we must debate with arguments of reason, and not with such of the heart. Accordingly, I must reject the argument of the greater worth of the mother's life as irrelevant, and unsupported by principle.

Firstly, the greater worth *might* thus be viewed *physiologically:* mother = a fully developed human being, and thus a subject of the law; fetus = a mere conglomeration of cells, and thus not a subject of the law. Surely, if this view of the fetus may exert influence on the respect or non-respect for its existence, then I can not see why the mother could not, for certain other reasons, sometimes very urgent, have that cell-mass removed; then I can not conceive on what moral grounds Prof. Treub regards any kind of abortion as wrong.

I presume, however, that Prof. Treub has gauged the mother's greater value *socially,* as a member of society. But, then, I answer, with the professor's famous colleague of Paris, Dr. Pinard: "To

discuss from an economical or social view-point the difference in value of the life of the mother and that of the child is simply monstrous."* In fact, to what extremes would not the approving of such a difference lead? A pertinent illustration, which may, better than ordinary reasoning, open my opponent's eyes, is an incident which occurred in Russia a few years ago.† During a severe winter, a farmer, seated on a wagon with his wife and children, was driving through a large forest. The howling of the wolves was heard in the distance, and it came nearer and nearer. Suddenly a pack of hungry wolves appeared, following the vehicle. The farmer drove on faster, but the brutes gained on him. It was a desperate task for the span to keep out of their reach. Finally they catch up with the wagon. What is to be done? The next moment the wolves will jump on the vehicle, and then the fate of the whole family is sealed. The frightened children crouch by their trembling mother. Suddenly the farmer, driven to despair, seizes one of the little ones and flings it among the pack of wolves, hoping that, by yielding one, he may save the rest. The hungry beasts stop a few moments to fight over their prey. But soon they are in hot pursuit again, fiercer because they have tasted blood. A second child is thrown to them, and, after a while, a third and a fourth. By this time the village was reached and the peril was past.

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* *Du soi-disant Fœticide Thérapeutique. Annales de Gynécologie,* January, 1900.

† Coppens, S.J., *Moral Principles and Medical Practice,* New York, p. 72.

Safe at home with his wife, the peasant felt no remorse of conscience. He had done no worse than saved the more valuable lives of himself and his consort.

Dudley and Stevens, the shipwrecked men spoken of before, laid the same flattering unction to their souls when, after seventeen days of starvation on the yacht *Mignonette,* they finally, turning cannibals, attacked their much younger companion, then defenseless from exhaustion. He was single, while they were fathers of families. We learned above that Judge Coleridge declared their conduct inhuman. Prof. Treub goes further: "In our case the fetus is lost in either event, and its right to live is no longer of any interest to it. . . . No partiality is shown to a supposedly more valuable life, but to the only life which still can be saved. The other can not be saved, and has no value."

Thus he emphasizes the worthlessness of the fetal life in our case. That this argument has most weight with the champions of medical abortion is evidenced also in the writings of the otherwise conservative Dr. Pinard. Nevertheless, he wrote down as a fundamental article of his medical profession of faith, the words used for our motto: "The right of life and death over the child belongs neither to the father, nor to the mother, nor to the doctor." The child's right to live is sacred and inviolable; no power can take it from him;* but, we must also notice, the French professor fails to see the sophism in his following words: "In these

*L. c.

circumstances, then (such as in our case), the obstetrician has, by all means, the right and the duty to intervene to save, at least, the only existence whose salvation is possible. I want to emphasize my use of the word *save,* and I insist upon this word, as it gives the operation an altogether different meaning from what it generally receives. With many people, medical abortion signifies *destruction*—sacrifice of the fetus. Words fail me to repudiate that deed. Keeping within the rules I set forth, by stopping the pregnancy, the accoucheur *does not sacrifice the fetus in order to save the mother.* He does not sacrifice the fetus, because it is irredeemably doomed whether the operation takes place or not, but the operation saves the mother's life at least, whereas, without the operation, she would perish with the fetus."* The great gynecologist believes to have thus demonstrated that procuring abortion in our case is not killing the fetus: "I showed that in therapeutic abortion, the only lawful one, the obstetrician strives to save the mother but does not cause the death of the child."†

Thus, in our case, the fetus is not killed, "because, whether or not intervention takes place, it is doomed," or, to let Prof. Treub speak again: "He is not guilty of killing who, in our case, sacrifices a little sooner the fetus which is positively lost." That amounts to

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* *De l'Avortement Thérapeutique. Annales de Gynécologie,* January, 1899.

† *Indication de l'Opération Césarienne. Congrès période. internation. de Gynécologie et d'Obstétrique.* Amsterdam, 1899.

setting up the principle: When a person has no chance to live, another may freely dispose of his right to live.

They who, believing that God is the Supreme Lord and Arbiter of life and death, hold also that He alone has the right to take life, will ask at once how Prof. Treub and his disciples justify this proposed transfer of authority over life and death. Aye, even they who, while indifferent to their Maker's sovereignty, nevertheless still recognize the rights of man, even they will ask by what right a man, on his own or a third party's behalf, can assume the authority to dispose of the right of another, though it may have become valueless.

But rather than enlarge upon philosophical speculations, I shall inquire at once whether the advocates of this principle are willing to admit all its consequences? If they are, then the validity of the principle will still be open for discussion. If not, then also the principle is disavowed by them, and it can not, therefore, be applied to our case. I venture to suppose the latter, and I put forth the following queries: Suppose there are on board of a ship some pest-stricken persons in a hopeless condition, thus "doomed" and "positively lost." Would you say the ship's physician or captain would do right in throwing those living victims into the sea in order to prevent others from becoming contaminated?

Again suppose, that after a battle a number of wounded soldiers are lying on the field "doomed" and "positively lost." For strategic purposes it is imperative to do away with every trace

of the engagement, and thus also with the wounded. It is found impossible to carry them along. Besides there is no time to lose. Would you not charge with inhumanity the general who, to do away with these mortally wounded would give them the finishing blow?

Take up once more the example given by Dr. van Oppenraay. Prof. Treub, it is true, denies its relevancy, but wrongly. For in both cases, A and X, the mother has the choice whether there shall be one corpse or two. "Whether this necessity spring from a law of nature, or from an irresistible deed of a third party, can make no difference whatsoever," so Dr. van Oppenraay himself writes to me.

Finally, suppose a case (summing up all the others) where a doctor sees a positively doomed patient suffer untold pangs. Would you justify him if, in order to deliver the sufferer from his pains, he should, to soothe his pain, give him a deadly dose of morphine, so as to hasten his death?

I could multiply such instances, and ask whether you admit the consequences of the principle you laid down. But I will not further importune Prof. Treub. The cases cited are plain enough.

Perhaps it may be objected: Such a general principle, as you shift upon us, is not ours. We hold that the authority to dispose of a life which has become worthless, 1. Refers only to a fetal life; 2. That it belongs to the physician alone; 3. And then only if required in order to save the mother's life. I beg leave to reply that each of these three limitations is quite arbitrary.

Only the fetal life. Why that alone? For there is no material difference between fetal and non-fetal. Prof. Pinard himself says: "From the moment a child is conceived, no one has the right to hinder its development; the obstetrician is always and everywhere bound to protect it, as well as its mother."* Again, if one does not yet consider the fetus as a real human being, on what grounds of *morality* can one oppose the destruction of its existence in certain other cases, particularly in a case where the mother will hazard the loss of her honor and reputation, and, perhaps, also (through adulterous conception) of husband and home? He who dares to proclaim as right such view of the fetal life unwittingly gives a mighty support to certain now justly censured practitioners.

Therefore, since no sound reason can be adduced for the limitation "only for the fetal life," one must drop it, and, consequently, the oft-quoted principle, too, unless one wishes to give it free rein for any and every life that has become worthless, not excepting the extra-uterine life, the life of a child on the mother's lap, nay, not even the life of the grown-up man.

Next, "this right of disposal is," quoth our opponents, "reserved to the doctor." But why, in emergencies, not also to others? To others to whom, just as much as to the physician, the care of human beings is entrusted, captains of ships, military authorities, etc.? Why may not they, too, in extreme cases, such as indicated above, dispose of "positively doomed" lives by a death blow, and

*L. c.

thus, from their point of view, save what may still be saved? He who can not answer this query is unable to maintain that, as Naegele contends, the right over life and death belongs in parturition to the doctor.

Then why "only in childbirth" is that right claimed for the doctor? Why not also, as we asked above, to put a doomed patient out of suffering? It seems to me that, once the end may justify the means, it would be more reasonable to dispose of a worthless right to live for the supposed benefit of the owner himself, rather than in behalf of others.

As long as our adversaries do not satisfactorily answer this query, which is growing lengthy and, perhaps, wearisome, but was forced upon us by sound logic, we reject the theory of the greater worth of the mother's life and of the worthlessness of the fetus' right as groundless reasons for allowing abortion;* and all there is left to our opponents is to retreat to the excuse of expediency.

In the long run, Prof. Treub does not hesitate to take this stand-

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* The same holds good in regard to the appeal to the so-called clash of rights, even though we should grant Prof. Treub that such really obtains in the case. But I do not grant this. A clash of rights in the true sense of the word can not, in my opinion, be aught but the moral right of two or more persons to claim quite simultaneously one and the same object (of right). There is no question of such a thing in our case. Here each of both claimants has, and retains, a claim to his own life, thus, to an object separately and exclusively his own. Nevertheless, as I said, even if we understood the term in the sense of our opponents, the appeal to a collision of rights is not valid, as it is not based on principle, and not warranting its logical consequences.

point. "For those who admit that there is an absolute right, I will grant that my deed is a deed of expediency and not of absolute right." Let us see how he attempts to justify this standpoint.

First of all, if ever, here would hold the axiom "supreme right is supreme wrong." In the face of most of the cases alleged (which in tendency are perfectly alike, the Russian peasant, the cannibals, Dudley and Stevens, the pest-stricken seafarers), the appeal to Cicero's old adage is all too easy, and we say right out: "*Qui nimis probat, nihil probat*" = "Who proves too much proves nothing."

What seems of more importance is Prof. Treub's appeal to what is held as legitimate practice by all physicians, in cases of cancer on the neck of the womb toward the end of pregnancy. Prof. Treub sets forth the case as though the cesarian section, then performed, were also an act of expediency, an act through which, in reversal of our case, the mother is killed to save the child. Let me declare at once that *if* the cesarian section were in that case as *certain* a killing of the mother as the deliberate abortion is in regard to the fetus, it also would have to be condemned as breaking the commandment "Thou shalt not kill," and as an application of the pernicious teaching "The end justifies the means."* I say *if*, for, with all respect for Prof. Treub's knowledge, I would ask him to answer, after due deliberation, the question: Would the cesarian section

* Cfr. Lehmkuhl, ed. ix., ii., p. 58, note 1.

in such a case entail the *certain killing*, or the certain hastening of the death, of the mother? That the operation involves the increase of danger, thus possibly accelerating the mother's death, I understand perfectly well, but is there no likelihood of the operation resulting as usual? If so, then the operation is not a *positive and certain* killing of the mother, but it only brings her in more or less danger of death. Now, to expose one's self or another to a danger, even a great danger to life, is *not* the same as causing *certain* death, such as deliberate abortion does. And, according to a generally accepted and applied rule of morality, one may, for grave and sufficient reasons, expose one's self, and also another, in our case the mother, to a danger of death, though it remains true that one may not wilfully inflict *certain death*. In the case proposed by Prof. Treub, there would, most likely, be an obligation both for the mother and for the doctor to let the operation be performed; and, consequently, this obligation would justify the deed.

On the medical answer to this question depends the morality of the cesarian section. Should it be an absolutely certain and direct killing of the mother, then it would be one of those deeds of expediency which are justly to be condemned. If it is *not* an absolutely certain and direct killing of the mother, then the deed is in keeping with the principles of sound morality, and, accordingly, it is altogether unlike deliberate abortion, which we condemn.

The foregoing remarks cover, I believe, all the arguments and strictures of Prof. Treub. Though I do not expect to have con-

verted him, I cherish some hope of having convinced him that the matter is not so simple as he first represented it, and that he wrongly called the Holy Office's view "narrow," in the sense in which he intended it.

The general charge of narrowness would not have stirred us to protest, being accustomed to biased and uncharitable criticism of our faith and morals. But Prof. Treub sees in our defense of the fetus' right to live a violation of the woman's right to live; and, turning the tables, he points to us as breakers of the commandment "Thou shalt not kill," as offenders whose narrow religious views lead to the unnecessary and criminal sacrifice of lives of housewives and mothers. Furthermore, he denies to our views all plausibility and all right to exist, and by his whole attitude he seems to demand that the law shall recognize his view in this matter as the only correct, incontrovertible, and safe one.

Against this pretension I confidently appeal to the judgment even of those who neither respect the authority of the Holy Office nor accept our arguments as entirely convincing. I trust that they also, after weighing our proofs and our replies to the arguments and strictures of our opponents, will see that Prof. Treub has no right to assume such a positive attitude as he did in his first article, and that they will acknowledge that the Catholic view has, at least, an equal title to acceptance.

On the other hand, the assurance and positiveness of Prof. Treub can hardly be squared with the fact that, even in the medical world,

the opinion touching the lawfulness of abortion has been settled only during these last fifty years. "The procuring of abortion has probably been unknown or rejected after Aetius, a physician of the fifth century of our era, indicated the means, for we do not see it advised in later works, and it had fallen into oblivion, when, in the course of the last century, W. Cooper, at the end of a report on a cesarian operation which proved fatal to the mother, submitted to Dr. Hunter, to whom his report was addressed, the following question: 'In a case where it is positively known that a child arrived at maturity can not be born in the natural way, would not reason and conscience, in order to save the mother, authorize proper measures to cause abortion, as soon as these measures can be taken safely?' This proposition created but little sensation. Nevertheless, a great many doctors in England and in Germany accepted it."*

As late as 1852 the question of the permissibility of medical abortion was the subject of a public and very serious discussion in the French *Académie de Medicine,* at the close of which it had become quite clear that neither the origin nor the prevalence of the view now current with the faculties flows from the progress of medical science, but simply from the influence of empiric philosophy, and from its degenerate principles of right and morality.

Once more, it is hard to square Prof. Treub's positiveness with the fact that since this question first came up many physicians have

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* *Dr. Dubois, Gazette Médicale,* 4 Mars 1843, quoted by Eschbach, 2d ed., p. 382.

opposed the procuring of abortion. Suffice it to invoke the authority of a professor "emeritus" of obstetrics, Dr. L. Charles de Boislinière, of St. Louis, author of "Obstetric Accidents, Emergencies, and Operations," published in 1896. In 1892 he delivered a lecture on the Moral Aspects of Craniotomy and Abortion* before the St. Louis Obstetrical and Gynecological Society. Relative to medical abortion he spoke as follows: "The principle once admitted that you are not justified in killing an innocent aggressor, except in self-defense, equally prohibits any interference with early gestation. From the moment of conception, the child is living. It grows, and what grows has life. *Homo est qui homo futurus* = 'the man to come is already a man,' says an ancient high authority. Therefore, foeticide is not permissible at any stage of utero-gestation. The killing of the defenseless fetus is sometimes done in cases of pernicious vomiting, in cases of tubal or abdominal gestation, the killing is accomplished by electricity, injections of morphine in the amniotic sac, the puncturing of that sac, etc. This practice is altogether too easily adopted by thoughtless or unscrupulous physicians. This practice is much on the increase. . . . Is it not time that this wanton *massacre of the innocents* should cease?"

Thus a noted colleague of Prof. Treub boldly compared deliberate abortion to the *slaughter of the innocents*. His mind is unaccessible to the peculiar reasoning by which others, such as the

* Reproduced in part in Rev. Coppens' *Moral Principles and Medical Practice*. New York, 18

celebrated Pinard, endeavor to persuade themselves that the direct extinction of a worthless life is, under the circumstances, no killing, no murder.

Here I am asked with some impatience: "What, then, about Lehmkuhl's view? He, too, the great Catholic moralist that he is, was at one time of the opinion that this operation in the circumstances given was not a killing of the fetus, no murder."

Indeed, Prof. Treub seems to think that he gives us the death-blow by his appeal to that learned theologian; nevertheless, he finds there no backing for so arrogantly stigmatizing the Holy Office's view as narrow.

Let us suppose that the decision which I have been championing be not invested with such an exalted character; let us further suppose that the authority which gave us the decree is only just equal to Lehmkuhl's, then we should have nothing more than two opposite views of a mooted question of moral theology. Now, I should like to know in what branch of science prevails the custom of censuring those holding opposite views on questions, and, what is worse, of threatening them on that account with a penal law. Nothing of that kind is ever done among our Catholic theologians. They invariably advance their opinions with deference to better judgment (*salvo meliori*) and with respect for *other opinions, salva reverentia opinionis contrarice.* In keeping with this courtesy was Prof. Lehmkuhl's modest tone, as is evinced by his *licere videtur, i. e.,* it seems permissible, and by his *puto licere:* I am of opinion that it is

allowable, and still more by his postscript to Dr. Gassert's articles in the *Kath. Seelsorger* (May, 1901); "As regards scientific abortion in those cases where, without it, both mother and child would die, while through it only the child would die, whereas the mother would most likely be saved, I believed that I could give in the former editions of my *Theologia Moralis* such explanations as to make it appear *doubtful* whether it was a direct killing." And somewhat further he has: "Formerly I thought that this could, perhaps, be questioned."

Even had this theologian not modified, in deference to the Holy Office, the opinion he held prior to 1895, it would still be untrue that he would, from his standpoint, have to sustain Prof. Treib in styling the interpretation of the Holy Office "narrow."

Nor has the professor a shadow of reason to represent Lehmkuhl as bowing somewhat reluctantly to the Holy Office's decision. For in his *Theol. Mor.*, ed. ix., n. 844, Lehmkuhl says: "From which decree of the Holy Office follows that the reasons alleged are not sufficiently sound to make the permissibility of medical abortion probable. Therefore, I say, conformably to the judgment of the Holy Office, that such an operation can not be performed with a safe conscience." And later again, in the *Kath. Seelsorger:* "This explanation given in the former edition of my work I had to drop after the Holy Office's decree of July 24, 1895. True, this decision, albeit, approved by the Holy Father, is not invested with the character of infallibility, as the Pope did not there make use of his supreme in-

fallible authority, yet the Catholic theologian must accept it as norm."

As to Lehmkuhl's reference to the priest's prudence (put forth by Prof. Treub in proof of his contention), the esteemed gentleman will, upon carefully rereading the passage, easily see that what is left to the clergyman's prudence is *not* a judgment *over the sinful or sinless character of the operation,* but only the advisability or unadvisability of warning the doctor against the operation according as the priest judges him well or ill-disposed to heed the warning. In the latter case, wisdom would bid the priest suffer the lesser evil—a fault committed unwittingly—to happen, rather than occasion formal (wilful) sin by a fruitless warning.

As to the soundness of Lehmkuhl's philosophy, it has no more been impaired by the Holy Office's decision than has the scientific reputation of so many great men by the fact that at one time they held erroneous views about certain questions. Thus, *e. g.,* the saying, "Homer, too, is sometimes caught napping," has been verified in the case of nearly all renowned obstetricians, when they refused to admit Semmelweis' well-grounded opinion about contact-infection being the cause of childbed fever. Still, those who were renowned then have remained so, notwithstanding their mistake.

Withal our thesis that sound philosophy recognizes the law of nature as an immutable standard of good and evil, and that, consequently, the precept "Thou shalt not kill" is not to be tampered with, abides unshaken, were it only for this reason, that in our case

the question is precisely whether or not abortion would be fatal, in other words, whether or not the unchangeable law "Thou shalt not kill" is applicable.

In conclusion, let me address once more to my esteemed opponent the query, Is our view *narrowness or wholesome consistency?* And I put this query to him now as to the implacable foe of unscrupulous abortion.

He knows, perhaps, better than I do, that, once the respect for the fetus' right to live has been shaken, men's demand for its life will prove as insatiable as the bloodthirst of a pack of hungry wolves.

Once expediency secures sway in this domain, the door is but just opened to the abortion-trade. Let one physician solemnly declare that nothing but the greater worth of the life of a housewife or mother may decide in the matter, and many others will at once come forth with other gauges in their hands, and the scales will rise against the fetus' interests also for vile reasons, the preservation of an honor already forfeited, of love of ease, of heartless consideration of health, selfishness, etc. And you, men of honor, you have robbed yourselves both of the right and the strength to fight with the freedom of an inviolate conviction such as are devoid of conscience, they will reduce you to silence by the assertion that their reasons for questioning the fetus' right to live are just as valid as yours. You will be weak, especially with unfortunate daughters of honored families, who will conjure you to save them at any cost, as the dishonor to themselves and their families would

be a far greater misfortune than the loss of one single life, which, it is claimed, is almost worthless from a social point of view.

Moreover, you complain that our penal law, as now in force, is almost powerless to hinder criminal abortions, powerless because the judge in investigating the criminal character of the deed must exact the generally impossible proof that the fetus was still alive at the time of the abortion. But, no matter how the penal code may be amended, in your onslaught on criminal practices you will find your mightiest ally always in the unremitting teaching of those eternal principles of morality, of right, which are the indispensable conditions of all true civilization, and of all social order. Only he who, in the face of all teaching of history, dares to disown the awful force of these principles, can join Prof. Treub in speaking here of "naïveté."

We Christians hope to profit by the lessons of history, and, by believing in the unimpaired strength of those principles, we look forward to a still better future of society, now developing in so many respects, also in regard to the fight against criminal abortion. And though Dr. van Oppenraay's last words are aimed chiefly at physicians—inasmuch as through increased respect for uterine life not a few of them will spare more young lives than has hitherto been the case—the hope that is expressed in those last words will surely have a responsive echo with everybody else.

In conclusion, I beg to take leave from my readers in the words of Prof. De Boislinière: "I respect the honest convictions of those

opposed to the opinions presented by this paper. But it is hoped that thoughtful physicians will soon reconsider their views, and adopt a more just and humane method of dealing with the rights of a living unborn child."

EDITOR'S NOTE, NO. I.—Nearly all the foremost American medical writers and practitioners of our day hold that abortion is *never* justifiable; but that in those cases where a few physicians claim there are grounds for its permissibility, the fatal results should be forestalled *either* by establishing *premature labor,* say from seven and a half to eight months, *or* by allowing the child to reach full term and then performing *cesarian section.*

"In circumstances where neither of these measures can be adopted, as we never have license to kill the fetus, we must simply trust in Divine Providence." (*Statement of a distinguished American physician.*)

No. II.—It is interesting to hear of conscientious physicians as well as of experienced parish-priests, and to read in volumes like Dr. Cook's *Satan in Society,* how often certain practitioners' prophecies have proved altogether false; and how frequently, through God's kindly providence, unwelcome children brought back to mothers both good health and financial comfort—boons of which they had been deprived for years—and how that youngest son or daughter [whose conception had been almost cursed, and attempts upon whose fetal life had been at least intended], became the aged parents' only support. On the other hand, where in compliance with the promptings of the flesh, unlawful means are used in the hope of securing freedom from trouble and embarrassment, both health and domestic happiness often are forever ruined.

May we not justly apply to such cases also Our Saviour's solemn warning: "He that loveth life (health) shall lose it"?